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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 924.

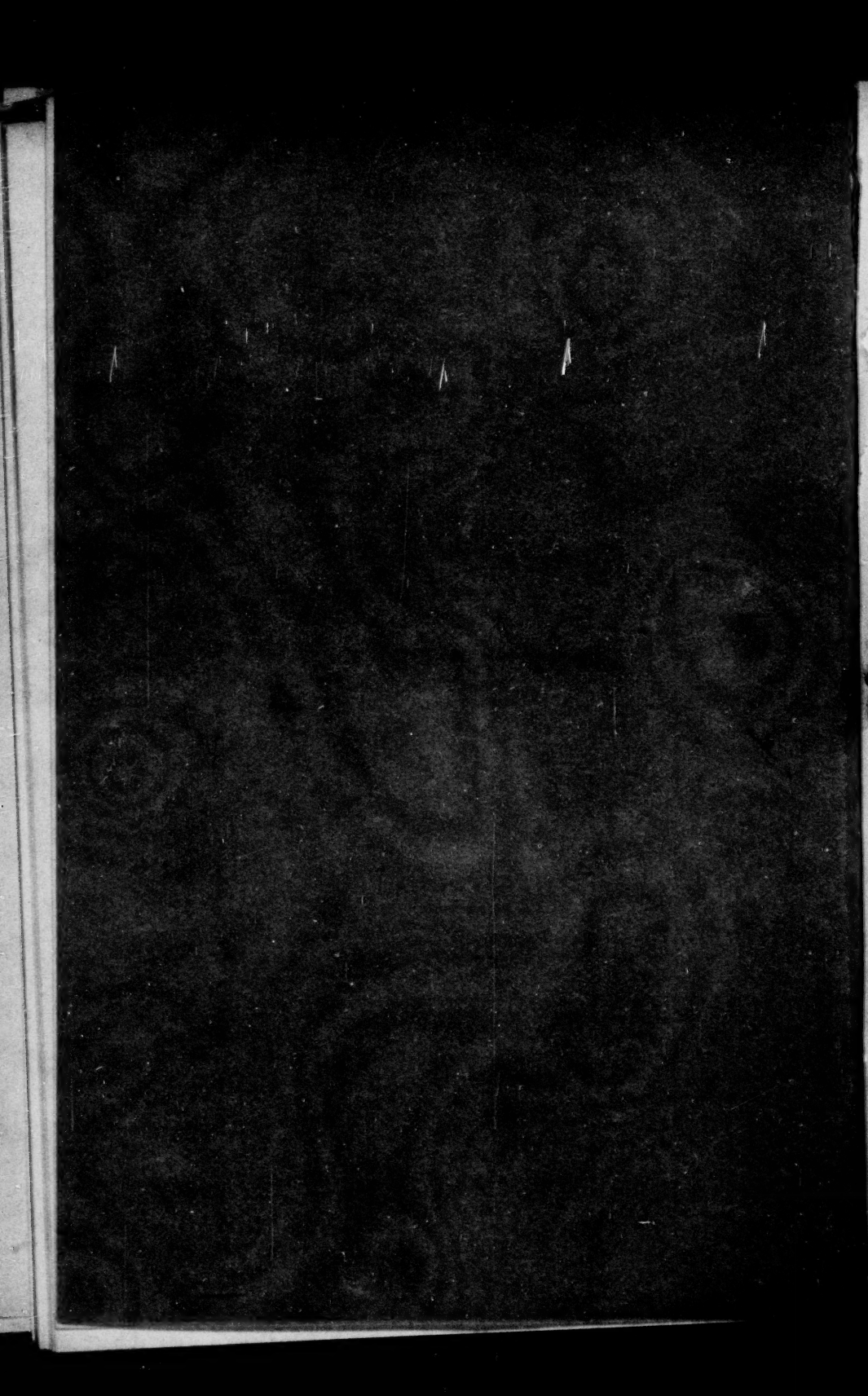
CHARLES WINCHESTER, APPELLANT,

vs.

HENRY M. LOUD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED SEPTEMBER 16, 1882.



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INDEX.

	Original.	Print.
Citation	1	1
Bill	2	1
Exhibit A (list of lands)	20	11
Subpœna	34	24
Petition for removal of cause to United States court	36	24
Order entering appearance of defendant Winchester	44	27
Order entering appearance of defendant Gay	46	28
Precipe to enter appearance of defendants Wasey and Whiting	48	28
Order entering appearance of defendants Wasey and Whiting	49	28
Hearing of motion to remand case to Iosco circuit court	50	29
Order remanding cause to Iosco circuit court	51	29
Claim and allowance of appeal	52	29
Bond on appeal (copy)	53	30
Precipe to clerk to prepare transcript, &c	56	31
Certificate	57	32

1 The United States of America to Henry M. Loud, greeting:

Whereas Charles Winchester has lately appealed to the Supreme Court of the United States from an order made by the circuit court of the United States for the eastern district of Michigan, in equity, on the 28th day of November, A. D. 1881, by which order the suit of Henry M. Loud, complainant, against Charles Winchester, George E. Wasey, Aaron F. Gay, Henry M. Loud, and Herbert F. Whiting, defendants, was remanded to the circuit court of the county of Iosco, in the State and eastern district of Michigan, in chancery, and has filed the security required by law:

You are therefore hereby cited to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of October next, to show cause, if any there be, why said order should not be corrected, and why speedy justice should not be done to the parties in that behalf.

1½ Witness the honorable Henry B. Brown, judge of the circuit court of the United States for the eastern district of Michigan, this eighth day of December, in the year of our Lord one thousand eight hundred and eighty-one.

HENRY B. BROWN.

I hereby acknowledge service of a copy of above citation this 9' December, 1881.

D. C. HOLBROOK,
Sol'r for Henry M. Loud.

(Indorsed:) 2776. U. S. circuit court, east. dist. Mich. In equity. Henry M. Loud v. Charles Winchester et al. Citation. Filed in clerk's office Dec. 9, 1882. A. Mandell, clerk. Beakes, Cutcheon & Stellwagen, sol'rs for def'ts.

2 TRANSCRIPT OF RECORD—FILED NOV. 1ST, 1881.

Bill.

STATE OF MICHIGAN,
County of Iosco:

To the circuit court for the county of Iosco, in chancery:

Your orator, Henry M. Loud, of said county of Iosco, respectfully shows unto the court that in the fall of the year 1865 a copartnership was formed, under the name and style of Loud, Priest & Shepard, composed of your orator, Henry M. Loud, Thurston Priest, Henry S. Shepard, Alanson R. Loud, Aaron F. Gay, Charles Winchester, and George C. Winchester, which continued for the period of one year; that said copartnership having expired, afterwards, and on the first day of January, 1867, another copartnership was formed by articles in writing, under the name and style of Loud, Priest & Gay, composed of your orator, who contributed $90,000 of the capital stock; Charles Winchester, who contributed $50,000 of the capital stock; Aaron F. Gay, who was to contribute $20,000 of the capital stock; Thurston Priest, who contributed $20,000 of the capital stock; and Alanson R. Loud, who was to contribute $20,000 of the capital

stock; that said Shepard had sold his interest in said partnerships to his partners, and George C. Winchester had sold his interest in said partnerships to said Charles Winchester; that in the year 1870 your orator and said Aaron F. Gay bought all the interest of said Alanson R. Loud, Thurston Priest, and Charles Winchester, and thereupon your orator and said Aaron F. Gay became the sole owners of the partnership property of said firms, and they continued the business under the partnership name of Loud, Gay & Co.

3 Second. That said several firms were engaged in the business of manufacturing lumber and buying real estate, principally such as are known and called pine lands and other lands, for the purposes of carrying on the business of manufacturing lumber in its various forms, and in connection therewith the purchase and sale of merchandise; that during the existence of said partnerships, up to the first day of January, 1876, they had purchased a large quantity of pine lands, amounting to about ninety thousand acres; that they possessed and owned all necessary teams, trucks, wagons, and implements, and had built mills, salt blocks, dwellings, storehouses, tramways, docks, wharves, etc., and that they owned vessels of various kinds, and all other personal property necessary for the successful prosecution of the business of manufacturing lumber and salt, and selling and transporting the same.

Third. That during the existence of said partnerships contracts for the purchase of said lands were made by the said Henry M. Loud and said Aaron F. Gay, either in their several or joint names, of various persons, and other of said lands were purchased in the names of your orator, said Gay and said Charles Winchester; that some of said contracts were assigned by your orator and said Gay to said Charles Winchester as security for debts which they owed him, and upon such contracts he received deeds for the lands mentioned in said contracts, and held the same as such security and for the use and benefit of your orator and said Gay; that all the lands conveyed to said Charles Winchester were held by him as a security merely for indebtedness owing him by your orator and said Gay; that a list and the description of said lands, as near as your orator can now set the same forth, are included in the list of lands which is hereto

4 annexed and marked Exhibit A, to which your orator refers for greater certainty; that of the said lands contracted for by one or more of said firms, and of which the conveyances were taken in the name of said Charles Winchester, as above stated, there were about three thousand (3,000) acres purchased of Erastus Corning, about six thousand (6,000) acres purchased of Francis Palms, about six thousand (6,000) acres purchased of Eber B. Ward, about four thousand four hundred (4,400) acres purchased of Edson & Wilson, the deeds for which were taken in the name of said Charles Winchester; that about thirteen thousand (13,000) acres of said lands were located and purchased by your orator and Alanson R. Loud from the United States, and certificates of purchase therefor were issued to them.

By the changes in said partnership interests above stated, said lands became the property of your orator and said Aaron F. Gay. After said certificates had been issued, said George C. Winchester fraudulently, and without the knowledge or consent of your orator and said Alanson R. Loud, or said Gay, obtained possession of said certificates, and procured patents

for said lands from the United States to be issued in his own name, and afterwards, through proceedings taken between said George C. and Charles Winchester, the particular details of which your orator is unable to give, the title to about 10,000 acres of said lands so held by said George C. Winchester was transferred to and placed in said Charles Winchester, who held said title at the time of the creation of the trust hereinafter stated. The title obtained to said lands by said George C. Winchester belonged to your orator and said Gay, and was held for them by said George C. Winchester as the equitable owners thereof, and when such title was
5 transferred to said Charles Winchester, he had notice and knowledge of the rights of your orator and said Gay in said lands, and of the manner in which the title had been obtained by said George, and that he held said title for your orator and said Gay, and said Charles Winchester received such title subject to the rights of your orator and said Gay, and held such title for them as the real and equitable owners of said lands; but after receiving said title, the said Charles Winchester claimed to hold the same as a farther security for the indebtedness owing to him by your orator and said Gay. That there may be other lands not contained in said exhibit, which were bought and paid for by said firms, and which belonged thereto, the descriptions of which lands your orator prays may be added to said exhibit and declared a part of said partnership property. That all of said lands set forth in said exhibit, and the others not described therein, either legally or equitably belonged to your orator and said Aaron F. Gay, as partners and as partnership property. That also the personal property of every name and kind belonged to your orator and said Gay as partners.

Fourth. That during the existence of said partnerships said Charles Winchester loaned and advanced to one or more of them, and they became indebted to said Charles Winchester in large sums of money, all of which was assumed by your orator and said Gay as partners, and with the consent of said Winchester they only were to be held therefor. That a part of said indebtedness arose from the purchase by your orator and said Gay of his (said Winchester's) interest in said former partnership, and as a security for a portion of said indebtedness he had taken title
6 in his own name to the aforesaid lands described as having been conveyed to him and which are a part of the lands described in said Exhibit A, as aforesaid, and also held other securities therefor by way of mortgages on other lands.

Fifth. And your orator further shows that a settlement and adjustment was had between your orator and said Gay and said Winchester of the said indebtedness to said Winchester, and of the amount which was to be paid and secured to said Winchester, and on such settlement he agreed to take the sum of $275,000.00 and interest at 5 per cent. in full discharge and payment of said indebtedness and of all his claims and demands against said Loud and Gay, on condition that the same should be secured to him upon all of said property, which security your orator and said Gay agreed to give, and in consideration also of the assignment to said Charles Winchester by your orator of a demand of about ten thousand dollars, which your orator then held against said Charles Winchester and George C. Winchester, and which assignment your orator then made to said Charles. That for the purpose of fully securing said Charles Winchester the payment of said debt, and to carry out said agreement, your orator and his

wife, on the said first day of January, 1877, and said Aaron F. Gay and his wife, made, executed, and delivered to said Charles Winchester a certain deed, conveying to said Winchester and his heirs, by descriptions therein mentioned, and also by a general clause in said deed, all the right, title, and interest of the said parties of the first part in said deed in and to any lands situated in the State of Michigan not theretofore con-
7 veyed to said Winchester, by means of which deed and other deeds before then executed to said Winchester there was conveyed to said Winchester all the lands owned by your orator and said Gay, and all the lands in which they had any interest, legal or equitable, including said lands for which said George C. Winchester obtained the patents, as above stated, and all the lands in which said firms and corporations had any interest, including all said lands held in said Winchester's name as aforesaid, and also transferred to said Winchester, all and singular, all the personal property which they owned or had any interest in, and which said property, real and personal, is worth at least the sum of eight hundred thousand dollars.

Sixth. That thereupon, to further carry out said agreement and understanding, the said Charles Winchester and Nancy E., his wife, by their deed, bearing date the first day of January, 1877, and which was recorded in the office of the register of deeds for the county of Iosco, in liber thirteen (13) of deeds, on pages 378, etc., duly witnessed and acknowledged, conveyed all and singular all of the aforesaid lands and personal property to Herbert F. Whiting, of Boston, Massachusetts, and Henry N. Loud, of Oscoda, Iosco County, Michigan, and George E. Wasey, of Detroit, Michigan, in trust—

1. To take possession of said real and personal property, and carry on and conduct therewith a general lumber and salt business at Oscoda, Michigan, and purchase such other personal property as might be necessary therefor; to make all needful repairs to the mills, salt blocks, and other property, and keep the same insured and pay the taxes thereon; to employ all necessary assistants and agents to carry on said business; to stock
8 and carry on the store in connection with said business, and to mortgage any portion of said property for the purpose of raising money with which to carry on and conduct said business.

2. To sell and convey any and all of said property, either real or personal, at any time they may deem best for the interests of said first party at public or private sale, provided that no sale of real estate shall be made without consent of said Winchester, his representatives or assigns, in writing. Any property purchased by said trustees shall be used and held by them, subject to this trust, the same as though conveyed to them hereby.

3. The receipts of said business and the proceeds of the sale of any said property, excepting the real estate, are to be applied by said trustees—

1st. To the payment of taxes, insurance, and all the expenses of conducting and carrying on said business or of making such sales.

2d. To purchase and pay any existing liens held by third or outside parties on any portion of said property, real or personal, as such trustees may deem best for the protection thereof and for the benefit of said Charles Winchester.

3d. The remainder of said receipts, profits, or proceeds to be paid to the said Charles Winchester, his heirs, executors, administrators, or assigns.

4th. The proceeds of any real estate sold shall be paid directly to said Winchester.

4. A full statement and account of the business and the receipts and disbursements of said trustees shall be rendered by them to said Charles Winchester, or his heirs, administrators, or assigns, on the first day of January of each year, and as much oftener as he or they may desire.

9 In case the said Charles Winchester desire the appointment or the employment of any person or persons as the agent or agents of said trustees to assist them in carrying on said business, said trustees are to appoint and employ such person or persons as such agent or agents.

5. This trust shall exist and continue for ten years from this date, and at the expiration of that time all the property, both real and personal, remaining in the hands of said trustees shall be conveyed to said Charles Winchester, his heirs and representatives or assigns, by said trustees.

Seventh. Your orator further shows and alleges that at the same time with the execution of said deed by said Charles Winchester and wife to said Whiting and others, to further carry out said agreement and settlement, and as a part thereof, the said Winchester, for the purpose of showing the purpose and object of said trust, made and executed a certain declaration of trust, in which, after reciting the execution of said deeds of your orator and said Gay to him, and the deeds by said Winchester and wife to said Whiting and others, he therein declared that upon the payment to him by said Whiting, Henry N. Loud, and said Wasey, trustees, of the sum of two hundred and seventy-five thousand dollars, and interest at the rate of five per cent., in installments, that said lands and personal property then remaining on hand should be reconveyed to your orator and said Gay, and said trust should cease, it being the intention that such payment should be made within the time of 10 years specified in said trust, the particular terms of which said writing your orator cannot now

10 state. The writing is now in the possession of said Winchester, but he prays that said Winchester may produce the same, or a true copy thereof, and when so produced, your orator prays the same, and the deed by said Charles Winchester to said Whiting and others, may be taken as a part of this bill, and to which your orator refers for greater certainty.

And your orator further shows and alleges that the said Whiting, Henry N. Loud, and George E. Wasey, in pursuance of said deed of said Winchester, and said writing made by said Winchester, took possession of all and singular said real estate and personal property, and have since operated and carried on said business.

Eighth. And your orator alleges the fact to be that said deed of your orator and said Gay to said Winchester, and the deed of said Winchester to said Whiting and others, and the said declaration of said Winchester in relation thereto, were made in pursuance of an agreement and understanding with said Winchester that they were for the sole purpose of securing to said Winchester the payment to him of said two hundred and seventy-five thousand dollars and interest only, and for no other purpose whatever; and the said Charles Winchester, as a part of said settlement and said trust, further agreed with your orator and said Gay to obtain and perfect in himself the title to the remainder of said 13,000 acres of lands (and being about 3,000 acres) for which patents had been issued as afore-

said to said George C. Winchester, and hold said title and said lands in and apply them as a part of said trust and as a security for said debt of $275,000. Such lands are of the value of $50,000, and such value ought to be applied upon said debt.

Ninth. And your orator further shows that said trustees took
11 possession of said property, and undertook to manage the same, to carry out the purpose of said trust as above stated, the said Henry N. Loud and George E. Wasey being the active trustees, and so continued until the fall of 1880, with that design, as your orator believes; but your orator alleges that they commenced making improvements in various ways; that they purchased real estate, consisting of pine lands to the amount of about $30,000; that by reason of the destruction by fire of a saw-mill and salt blocks and other property in 1877, they rebuilt such mill and salt works, and supplied such other property, and the expenditures therefor, and for said improvements, and for the purchase of said pine lands, were made out of the proceeds of said business, and by reason thereof they were unable to pay said Winchester the installments due him up to and about the first day of November, 1880, except about the sum of $17,000, which was paid to said Winchester in that year; that in the mean time the said Whiting, Loud, and Wasey formed themselves into a co-partnership, under the name of the Oscoda Salt and Lumber Company, and under which name they conducted said business, and under which name the same is now being carried on; that up to the date last aforesaid the said Winchester was informed of all said expenditures and consented thereto. That said Winchester, on or about the 23d day of November, 1880, determined to repudiate said trust, and formed the design to hold, control, and dispose of said property as his own, and without reference to any rights of your orator therein, and gave a written notice to said trustees that he canceled said trust, and that the same was at an end. And in pursuance of said design he is now managing and disposing of said property, and he denies that he is bound by said trust, and denies that your orator has any right or title in said property, and denies that
12 the same is held, or ought to be held and managed by said trustees for the payment of said sum and interest to him, and now claims that said property is his own, and that said trustees are managing simply as agents for him, and declares he will not accept said $275,000 and interest for his said debt, unless compelled, and refuses to state what sum he will take.

That Wasey and Gay assent to said course and said claim and assumption of ownership of said Winchester, and are in combination and confederacy with him therein, and in the repudiation of said trust; that said Winchester has employed said Gay to take part with said Wasey in the management of said property, and said property is not now managed nor said business carried on in the execution of said trust; on the contrary, they are managed, controlled, and conducted as the individual and sole interest of said Winchester.

Your orator further shows that the books relating to the business of said concern are not properly kept so as to show the condition of the business and enable an accounting to be rendered thereof; that the correspondence relating thereto is carried on by said Gay, Wasey, and their bookkeeper, in their individual names; that it is impossible to learn the situa-

tion of the affairs of said business from the books thereof, and they have never rendered any account of said business; of all which the said Winchester well knows, and they refuse to give any information in relation to said business.

Your orator further shows that the lumber and logs on hand, and the proceeds, rents, and earnings of said property will yield for the present year about the sum of three hundred and thirty thousand dollars, which would pay all the liabilities of said business, and also the necessary investments and repairs, and leave at least one hundred and fifty thou-
13 sand dollars surplus, of which at least one hundred thousand dollars should be applied upon the debt to said Winchester, and there is no reason why a like sum of money cannot be paid to said Winchester each year hereafter; and had said business been conducted heretofore according to said trust, and the money not diverted with the knowledge and consent of said Winchester, he might and ought to have been paid at least the sum of twenty-five thousand dollars per year, except the first year, on the principal sum due him.

Your orator further shows that said Wasey and Gay have assumed to control, and do control, the management thereof, and are acting under the direction and as the agents of said Winchester, and without any fixed salaries, and they draw such sums as they please, and in disregard of said trust and its purposes; that they are personally hostile to your orator, and not only in the management of said property disregard the purposes of said trust, but they openly deny that your orator has any interest in said property or its management, and they deny that he has any right to inquire into their conduct or management, or to be informed thereof, and entirely repudiate him and his interest in respect to said trust. The said Gay, for himself, claims that he does not make any claim as a cestui que trust in said property, and he adopts such course for the purpose of depriving your orator of his rights under such trust and in said property.

That said Henry N. Loud has endeavored to perform his duty as said trustee, to faithfully execute such trust according to its purposes, and pay said def't as fast as the same can be done, but the said Wasey and Gay, acting in concert, have taken from him the management of all the
14 most important and material parts of the business connected with said property, and he is opposed and thwarted by them in his efforts to execute said trust. He is the only one of the three trustees who had any practical knowledge of the kind of business which is carried on with said property, which is the getting out of logs, manufacturing them into lumber, and manufactucing and selling salt, and the running of the two mills and salt works, which are parts of said property; that he has been employed in such business for years and during all his business life, while said Wasey never had any knowledge of or experience in such business when appointed such trustee. Said Whiting resides in Boston, Massachusetts, and has never given any attention whatever to said business. The policy and purpose of said Henry N. Loud, and the efforts made by him in the execution of said trust, are all directed to economical management of the property and business, so as to realize out of it as much money as possible to apply on said debt, and to that end no more expenditures about such property than are necessary for its preservation and operation, and also that the business

of the mercantile store, which is carried on as an adjunct to said business, shall be conducted with the view of meeting the wants of such business and the demands which experience with said business and said store have shown to exist. To the contrary of this said Gay and Wasey pursue an entirely different policy, and manage the property and business to the ends of enlarging and extending the property, making additions and improvements, costing large sums of money, for which there is no necessity, and disposing of the proceeds as they please, or as directed by said Winchester; they practice no economy in the management of the business; are lavish in expenditure; carry on the business of the store without reference to the requirements of said business, and have increased the investments therein largely, and to many thousand of dollars beyond the requirements of said business and beyond the demands of the market, and generally their management and policy are to use the profits of said business in such manner that said debt shall remain unpaid, and they use the firm name under which the business is done, endorsing paper not belonging to said business. They have made such use of said name against the protest of your orator; have kept the transactions thereof from the books of the business, and have sought to conceal them from your orator. They refuse to accept or act upon the advise and judgment of said Henry N. Loud, and there is, therefor', not alone a want of harmony in the management of said business, but there is conflict of judgment and action. Said Wasey and Gay persist in keeping employed a book-keeper who refuses to recognize the authority of said Henry N. Loud as trustee; refuses to obey his direction and orders in reference to said business in the department in which said book-keeper is employed, and refuses to give to said Loud information about said business in respect to that part of it which is within the department and knowledge of said book-keeper, and as to the books kept and acts done by him; and said book-keeper is personally impudent and insulting to said Henry N. Loud, and for these causes said Henry N. Loud has sought to have such book-keeper discharged, and has endeavored to discharge him, and have another competent man put in his place. Notwithstanding these things, said Wasey and Gay refuse to assent to said book-keeper's discharge, and persist in retaining him. He takes his employment from them; obeys their directions, and is simply a tool in their hands to carry out their directions. This state of affairs is well known to said Winchester, and this course is persisted in by him to enable him more effectually to deprive your orator of his interest in said property, and make it impossible for him to claim at any time that said debt has been paid, and to effectually enable said Winchester to become the owner of said property, relieved from the claims of your orator.

The said Gay claims to have equal authority with said Wasey in the management and control of said property and business as the employee of said Winchester, and denies that Henry N. Loud, as such trustee, or the trustees under such trust have any right to direct or control his acts in relation to said property and business.

That said Whiting, who is the son-in-law of said Winchester, does nothing whatever toward the execution of said trust, and is consenting to the claims made and course taken by said Winchester, and the manage-

ment of said property as it is now done by him and by said Wasey and Gay.

That the acts and conduct of said Winchester, Wasey, Gay, and Whiting are in repudiation of said trust, and are a fraud on your orator, and are destructive of his interests.

Your orator further shows that during the conduct of said business lands have been purchased from time to time from the proceeds thereof by the said Wasey and Gay, a description of which lands your orator is unable to give, and on such purchase the title to the lands has been taken in the name of said Wasey or said Charles Winchester, or in the firm name in which said business has been carried on, the particular
17 facts in relation to which your orator has been unable to obtain and cannot give, but a large sum of money from the proceeds of said business has been expended in the purchase of lands, and, as he is informed and believes, more than the sum of thirty thousand dollars; and he avers that all such lands, in whatsoever name the same may have been purchased, belong to and constitute a part of said trust, and should be classed with and treated the same in all respects under said trust as the lands mentioned in said Exhibit A.

Tenth. In consideration whereof your orator prays that the said Herbert F. Whiting, Charles Winchester, George E. Wasey, Henry N. Loud, and Aaron F. Gay may answer this bill without oath (the same being waived) as fully as though specially interrogated thereto, and that the said securities and writings hereinbefore mentioned may be declared to be in full force and effect and in the nature of a trust, and that the same were executed and delivered in the nature of a security, and that all the lands mentioned in said Exhibit A and any other lands in which said partnerships were interested, and any other lands held by said Winchester in his own name in relation to said business be decreed to be held by him as security in said trust for the said debt; that the defendants be required to state and set forth a description of all the lands purchased by them or either of them, or by said Wasey, Gay, or Winchester, from the proceeds of the said trust property and business, and the names in which the purchases were made and in which the title is held, and that such lands be decreed to be a part of said trust, and applied and disposed under said trust; and that said trust be ordered to be executed, and that said Winchester, Wasey, Henry N. Loud, and Whiting be enjoined and restrained from disposing of said premises, or in any way interfering with the same other than for the purposes of said trust; and that upon the payment to said Winchester of said $275,000
18 and interest a reconveyance be made to your orator and said Gay; that said Wasey and Whiting be removed as such trustees, and others appointed in their place and stead, and that until they are so removed they be declared to be trustees under the terms and conditions of said trust, and that they be enjoined and restrained from in any way or manner using or disposing of any of said property, except according to the terms of said trust, and that they be decreed to execute said trust and manage said property and business for the payment of said debt, and that the salary of said trustees be fixed and adjusted at such amount as the court shall deem equitable, and that said Winchester be personally charged with all moneys received in said business, and that he account therefor and for the pro-

ceeds of the sales of any of said lands and for the value of said 3,000 acres, the title to which he agreed to obtain as above stated; that the salary of said Gay be fixed; that said Gay be declared to have no authority to manage or control said property or business except as an employee or assistant of the trustees and under their direction; that said trust be carried out according to the spirit and intent thereof, and that in case any or either of said trustees shall be guilty of diverting any of said money or of failing to perform and execute the trust imposed upon them that he or they be dismissed and discharged, and that another trustee or trustees be appointed in his or their place, or that a receiver be appointed with the usual powers and authority of receivers in like cases to take possession of all said property and carry out and perform the terms of said trust. That your orator may, from time to time, and whenever said trustees shall be guilty of the non-observance of said trust, apply to this court for
19 an order restraining said trustees therefrom. That said trustees be ordered to render an account of all their doings to this court, of all moneys received and paid out, and the particulars thereof and as required by said trust; and that your orator may have such other or further relief as shall be equitable, with his costs in this behalf.

Eleventh. May it please the court to grant to your orator the injunction of this court restraining and enjoining the said defendants, and each of them, as above prayed. Also the writ of subpoena of this court, directed to said Charles Winchester, Henry N. Loud, Herbert F. Whiting, George E. Wasey, and Aaron F. Gay, commanding them to appear in this court, and to answer this bill and abide the decreee of the court herein.

D. C. HOLBROOK,
Solicitor for Compl't.
HENRY M. LOUD,
B. HANCHETT,
Of Counsel.

STATE OF MICHIGAN,
County of Saginaw:

On this sixth day of September, 1881, personally appeared before me the undersigned, the above-named Henry M. Loud, known to me to be the person who signed the above bill, and, being by me duly sworn, says that he has read the above bill and knows the contents thereof, and that the same is true, except as to those matters which are therein stated to be upon information and belief, and as to those matters he believes it to be true.

GILBERT M. STARK,
Notary Public, Saginaw County, Michigan.

20

EXHIBIT A.

IOSCO COUNTY.

Descriptions.	Sec.	Town. north.	Range east.
NE. quarter of SW. quarter	1	24	5
SW. quarter of SW. quarter	1	24	5
SW. quarter	4	24	5
SE. quarter of SE. quarter	24	24	5
E. half of NW. quarter	3	24	6
NW. quarter of NW. quarter	3	24	6
NW. quarter of NE. quarter	4	24	6
NW. quarter	4	24	6
NW. quarter of NE. quarter	5	24	6
N. half of NW. quarter	5	24	6
NE. quarter of NW. quarter	17	24	6
W. half of NE. quarter	19	24	6
SE. quarter of NE. quarter	19	24	6
NW. quarter	19	24	6
E. half of NE. quarter	21	24	6
S. half of NW. quarter	22	24	6
SW. quarter	22	24	6
SW. quarter of SE. quarter	22	24	6
SE. quarter of NE. quarter	25	24	6
N. half of SW. quarter	25	24	6
SE. quarter of SW. quarter	25	24	6
NW. quarter of SE. quarter	25	24	6
SE. quarter of SE. quarter	25	24	6
NW. quarter of SE. quarter	36	24	6
SW. quarter of SE. quarter	10	24	7
N. half	13	24	7
N. half of SW. quarter	13	24	7
SE. quarter of SW. quarter	13	24	7
SE. quarter	13	24	7
N. half	14	24	7
NE. quarter of SW. quarter	14	24	7
E. half of NW. quarter	1	23	8
SW. quarter of NW. quarter	1	23	8
NE. quarter of SW. quarter	1	23	8
W. half of SE. quarter	1	23	8
S. half of NE. quarter	2	23	8
S. half of NW. quarter	2	23	8
S. half of SW. quarter	2	23	8
SE. quarter	2	23	8
NE. quarter of NE. quarter	3	23	8
SW. quarter of NE. quarter	3	23	8
E. half of NW. quarter	3	23	8
NW. quarter of NW. quarter	3	23	8
W. half of NE. quarter	4	23	8
SE. quarter of NE. quarter	4	23	8
NW. quarter of NE. quarter	5	23	8
N. half of NW. quarter	5	23	8
SW. quarter of NW. quarter	5	23	8
NE. quarter of SW. quarter	5	23	8
S. half of SE. quarter	5	23	8
N. half of NE. quarter	6	23	8
SW. half of NE. quarter	6	23	8
E. half of NW. quarter	6	24	8
SW. quarter	6	23	8
NW. quarter of SE. quarter	6	23	8
E. half of NW. quarter	7	23	8
SW. quarter of NE. quarter	7	23	8
E. half of NE. quarter	8	23	8
S. half of SW. quarter	8	23	8
S. half of SE. quarter	8	23	8
SW. quarter of NE. quarter	9	23	8
NE. quarter of SW. quarter	9	23	8

EXHIBIT A—Contined.

Descriptions.	Sec.	Town. north.	Range east.
21 SW. quarter of SW. quarter	14	24	7
N. half of SE. quarter	14	24	7
NE. quarter	15	24	7
SE. quarter of SE. quarter	15	24	7
NE. quarter	16	24	7
SE. quarter of NW. quarter	16	24	7
SW. quarter	16	24	7
W. half of SE. quarter	16	24	7
E. half of SE. quarter	17	24	7
N. half of SW. quarter	18	24	7
N. half of SE. quarter	18	24	7
E. half of SE. quarter	20	24	7
NE. quarter	21	24	7
E. half of NW. quarter	21	24	7
S. half of SW. quarter	21	24	7
N. half of NW. quarter	28	24	7
NE. quarter of NE. quarter	29	24	7
SE. quarter of NE. quarter	30	24	7
SE. quarter of SW. quarter	30	24	7
NE. quarter of SE. quarter	30	24	7
E. half of NE. quarter	36	24	7
N. half of SW. quarter	18	24	8
N. half of NW. quarter	19	24	8
E. half of SW. quarter	20	24	8
SW. quarter of SW. quarter	20	24	8
SE. quarter	20	24	8
SW. quarter of SW. quarter	21	24	8
SE. quarter of SE. quarter	25	24	8
SW. quarter of SW. quarter	26	24	8
	Acres.		
Lot 1	67.75	27	24	8
SE. quarter of SE. quarter	27	24	8
SE. quarter of NE. quarter	10	23	8
SE. quarter of SW. quarter	10	23	8
E. half of SE. quarter	10	23	8
SW. quarter of SE. quarter	10	23	8
Entire	11	23	8
S. half of NE. quarter	12	23	8
W. half of NW. quarter	12	23	8
SE. quarter of NW. quarter	12	23	8
NW. quarter of SE. quarter	12	23	8
N. half	14	23	8
N. half of NW. quarter	15	23	8
NE. quarter	15	23	8
W. half of NE. quarter	17	23	8
NE. quarter of NW. quarter	17	23	8
NW. quarter of NE. quarter	18	23	8
S. half of SE. quarter	28	23	8
NE. quarter of NE. quarter	33	23	8
SE. quarter of NW. quarter	2	24	8
SE. quarter of SW. quarter	2	24	8
NE. quarter of NW. quarter	11	24	8
N. half of NW. quarter	12	24	8
	Acres.		
Lot 7	40.69	4	23	9
Lot 8	46.04	4	23	9
NE. quarter of NE. quarter	40.45	5	23	9
NW. quarter of NE. quarter	40.45	5	23	9
Lot 1	67.96	5	23	9
Lot 2	62.58	5	23	9
Lot 4	61.87	5	23	9
NE. quarter of NE. quarter	41.10	6	23	9
Lot 1	52.44	6	23	9
N. half of NE. quarter	7	23	9

EXHIBIT A—Continued.

	Descriptions.	Acres.	Sec.	Town. north.	Range east.
22	Lot 4	22.76	27	24	8
	SW. quarter of NE. quarter		29	24	8
	Frac. n. of river on island	12.90	29	24	8
	Lot 4	33.46	29	24	8
	SW. quarter of NW. quarter	40.	29	24	8
	Lot 5	51.18	30	24	8
	SE. quarter of SE. quarter		30	24	8
	SW. quarter of NW. quarter	41.75	31	24	8
	SE. quarter of SW. quarter		31	24	8
	SW. quarter of SE. quarter		31	24	8
	Lot 2	69.47	33	24	8
	Lot 1	39.60	33	24	8
	Lot No. 1	3.390	34	24	8
	SW. quarter of SW. quarter		34	24	8
	E. half of SE. quarter		34	24	8
	Lot 3	3.960	35	24	8
	N. half of NE. quarter		36	24	8
	NE. quarter of NW. quarter		36	24	8
	Lot 4		3	23	9
	Lot 3	4.608	4	23	9
	Lot 4	41.68	4	23	9
	E. half of NW. quarter		7	23	9
	SW. quarter of NW. quarter		7	23	9
	NW. quarter		9	23	9
	SE. fractional quarter		16	23	9

Also private claim of Louis Chevallier, in sec's 3, 4, 5, and 6, 646.67 acres, known as the Chevallier reservation, excepting lot 5, block 2; lot 12, block 5; lot 6, block 7; lot 14, block 7; lot 7, block 8; lot 6, block 8; lot 1, block 9; lot 2, block 9; lot 5, block 9; lot 10, block 11; lot 21, block 3; lots 7 and 8, block 5; lots 5 and 6, block 6.

Also a certain piece of land described as follows: Commencing at a point on the west side of the continuation of River street (as per recorded survey of Henry G. Rothwell) seventy-five (75) feet southerly from a stake at the intersection of River street with the street running from State Road bridge to the office of Loud, Gay & Co.; thence S. eighteen (18°) degrees thirty (30′) minutes E. seventy-five (75) feet; thence S. seventy-one (71°) degrees thirty (30′) minutes W. one hundred (100) feet; thence N. eighteen (18°) degrees thirty (30′) minutes W. seventy-five (75) feet;
23 thence N. seventy-one (71°) degrees thirty (30′) minutes, E one hundred (100) feet, to place of beginning, be the same more or less. All the above descriptions of exceptions being according to the recorded survey of Loud, Gay & Co.'s addition to the village of Au Sable, in Iosco County and State of Michigan.

All that certain piece or parcel of land situated and being in the county of Iosco and State of Michigan, and described as follows, to wit: Commencing at the NW. corner of lot five (5), of section three (3), in town. twenty-three (23) N., of range nine (9) E., said point being where the E. and W. quarter line of said section three (3) intersects the Au Sable River; running thence in a southerly direction down the bank of said river to a point eight hundred and twenty-two (822) feet, measured in a line due S. from said quarter line; thence in an easterly course parallel with said

quarter line to Lake Huron; thence in a northerly course along the shore of said lake to where a line, extending from the center of Division street (being a street so named in the original plat of the village of Oscoda), would intersect Lake Huron; thence in a westerly course along the center of said Division street to the center of State street; thence S. along the center of State street to the E. and W. quarter line of said section three (3); thence westerly along said quarter line to the Au Sable River, the place of beginning, be the same more or less; excepting lots one (1), two (2), three (3), four (4), and five (5), of block one (1), and lot sixteen (16) in block five (5), of Loud, Gay & Co.'s second addition to the village of Oscoda, being a part of the above-described lands, according to a survey made and recorded at Tawas, the county seat of Iosco County. Also lots five (5) and six (6) of block eight (8) of the village of Oscoda, according to the original survey recorded by the register of deeds of Iosco County, at Tawas, the county seat of said county, together with the land
24 lying between said lots and the shore of Lake Huron, be the same more or less.

Also lots four (4), five (5), and six (6), block eight (8); lot one (1) in block one (1); lot one (1) in block two (2); lot eight (8) in block (3) of Pierce's subdivision of the village of Au Sable, recorded by the register of deeds of Iosco County, at Tawas, State of Michigan.

Also lot one (1), block A; lot one (1), block B, of Stockman's addition to the village of Au Sable, recorded by the register of deeds of Iosco County, at Tawas, State of Michigan; that parcel of land in Pierce's subdivision of the village of Oscoda, Michigan, lying W. of Fifth street, except two small parcels thereof owned by other persons, and the cemetary lot.

Descriptions.	Acres.	Sec.	Town. north.	Range east.
Lot 2	47.73	7	24	9
Lot 5	45.60	8	24	9
SW. quarter of NW. quarter		9	24	9
SW. quarter of SE. quarter		9	24	9
Lot 1	42.96	10	24	9
W. half of SE. quarter		10	24	9
NW. quarter of NE. quarter		15	24	9
NE. fraction	27.61	17	24	9
Lot 1	65.50	22	24	9
Lot 2	55.15	22	24	9
E. half of NW. quarter		22	24	9
NW. quarter of NW. quarter		22	24	9
Lot 3	66.97	22	24	9
Lot 3	28.23	27	24	9
Lot 1	37.10	31	24	9
Lot 2	57.84	31	24	9
Lot 3	21.88	31	24	9
Lot 4	30.62	31	24	9
Lot 5	36.44	31	24	9
Lot 6	51.63	31	24	9
Lot 7	7.61	31	24	9
Lot 1	68.00	32	24	9
Lot 2	62.97	32	24	9
Lot 3	58.93	32	24	9
Lot 4	13.19	32	24	9
Lot 5	25.04	32	24	9

25 CRAWFORD COUNTY.

Descriptions.	Sec.	Town. north.	Range west.
E. half of SE. quarter	8	25	1
S. half of SE. quarter	19	25	1
SW. quarter of NE. quarter	24	25	1
E. half of NW. quarter	24	25	1
SW. quarter of NW. quarter	24	25	1
S. half	24	25	1
SE. quarter	26	25	1
W. half	28	25	1
SE. quarter	28	25	1
N. half	34	25	1
SW. quarter	34	25	1
Entire	36	25	1
S. half of SW. quarter	4	26	1
NW. quarter	8	26	1
W. half	14	26	1
SE. quarter of NE. quarter	18	26	1
E. half	22	26	1
SW. quarter	22	26	1
SW. quarter of SW. quarter	33	26	1
SW. quarter of SW. quarter	1	27	1
E. half of NE. quarter	17	28	1
E. half of SE. quarter	17	28	1
SW. quarter of NE. quarter	20	28	1
SW. quarter of NW. quarter	22	28	1
E. half of SW. quarter	13	26	2
NE. quarter of SE. quarter	14	26	2
SW. quarter of SE. quarter	14	26	2
NE. quarter of NW. quarter	22	26	2
SW. quarter of NW. quarter	20	28	2
NE. quarter of SE. quarter	30	28	2

MONTGOMERY COUNTY.

Descriptions.	Sec.	Town. north.	Range east.
W. half of NW. quarter	29	30	1
W. half of SW. quarter	29	30	1
S. half of NW. quarter	30	30	1
SW. quarter	30	30	1
E. half	30	30	1

OGEMAW COUNTY.

NE. quarter of NE. quarter	24	24	4
NE. quarter of SW. quarter	24	24	4

OSCODA COUNTY.

Descriptions.	Sec.	Town. north.	Range east.
W. half	2	25	1
W. half of NE. quarter	3	25	1
NW. quarter	3	25	1
S. half	3	25	1
NE. quarter of NE. quarrer	4	25	1
E. half of SW. quarter	1	26	2
NW. quarter of SW. quarter	1	26	2
Entire section	2	22	2
S. half of NE. quarter	3	26	2
S. half of SW. quarter	3	26	2
26 S. half of NE. quarter	4	25	1
SE. quarter	4	25	1
NE. quarter	9	25	1
W. half of NW. quarter	9	25	1
W. half of SW. quarter	9	25	1
N. half of SE. quarter	9	25	1
SE. quarter of SE. quarter	9	25	1
NE. quarter	10	25	1
NW. quarter of NW. quarter	10	25	1
NW. quarter of NE. quarter	11	25	1
S. half of NW. quarter	11	25	1
E. half of NE. quarter	17	25	1
NE. quarter of SE. quarter	17	25	1
NW. quarter of NW. quarter	22	25	1
SW. quarter of SW. quarter	23	25	1
NE. quarter of NW. quarter	26	25	1
NW. quarter	30	25	1
S. half	19	26	1
N. half	30	26	1
SW. quarter	34	26	1
SE. quarter of SE. quarter	34	26	1
S. half of SW. quarter	35	26	1
E. half	19	27	1
SW. quarter	22	27	1
N. half	26	27	1
NE. quarter of NW. quarter	28	27	1
W. half of NW. quarter	28	27	1
E. half	31	27	1
NW. quarter	3	28	1
NE. quarter	5	28	1
NE. quarter of SW. quarter	5	28	1
NE. quarter of NE. quarter	17	28	1
SE. quarter	3	26	1
SW. quarter of SW. quarter	8	26	2
E. half of NE. quarter	9	26	2
E. half of SE. quarter	9	26	2
W. half of NW. quarter	10	26	2
N. half of SW. quarter	10	26	2
SE. quarter of SW. quarter	10	26	2
E. half	10	26	2
E. half	11	26	2
NW. quarter	11	26	2
N. half	12	26	2
NW. quarter of SW. quarter	13	26	2
SE. quarter of SW. quarter	14	26	2
N. half	15	26	2
SW. quarter of NE. quarter	17	26	2
E. half of NW. quarter	17	26	2
NW. quarter of NW. quarter	17	26	2
E. half of SW. quarter	17	26	2
N. half of SE. quarter	17	26	2
W. half of NE. quarter	23	26	2
E. half of NW. quarter	23	26	2

OSCODA COUNTY—Continued.

Descriptions.	Sec.	Town. north.	Range east.
W. half of NW. quarter	24	26	2
SE. quarter of NW. quarter	24	26	2
SE. quarter of NE. quarter	15	27	2
NE. quarter of NE. quarter	17	27	2
E. half of SW. quarter	21	27	2
SE. quarter	21	27	2
SW. quarter of NE. quarter	31	27	2
SE. quarter of NW. quarter	31	27	2
SE. quarter of SE. quarter	31	27	2
S. half of NE. quarter	33	27	2
SE. quarter of NW. quarter	33	27	2
27 E. half	1	26	2
NW. quarter	1	26	2
S. half of NW. quarter	35	27	2
SW. quarter	35	27	2
E. half of SE. quarter	45	27	2
SW. quarter	36	27	2
NE. quarter	19	28	2
NW. quarter	20	28	2
SE. quarter	20	28	2
SW. quarter	21	28	2
W. half	27	28	2
SE. quarter	27	28	2
N. half	28	28	2
NE. quarter	29	28	2
NE. quarter	34	28	2
W. half of NE. quarter	17	26	3
SE. quarter	17	26	3
SW. quarter	20	26	3
SW. quarter	23	26	3
S. half of NW. quarter	28	26	3
S. half	28	26	3
S. half of NE. quarter	29	26	3
NW. quarter	29	26	3
N. half of SW. quarter	29	26	3
N. half of SE. quarter	29	26	3
SW. quarter of SW. quarter	30	26	3
E. half	30	26	3
NE. quarter	31	26	3
N. half of NW. quarter	31	26	3
NW. quarter of SE. quarter	31	26	3
N. half of NE. quarter	33	26	3
NE. quarter of NW. quarter	33	26	3
Lot 5 (Acres. 58.36)	9	25	3
SE. quarter of NE. quarter	34	27	2
SE. quarter	34	27	2
E. half of NW. quarter	17	26	3
E. half	20	26	3
Entire	21	26	3
W. half of NE. quarter	22	26	3
W. half of SE. quarter	22	26	3
W. half	22	26	3
N. half of NE. quarter	27	26	3
N. half of NW. quarter	27	26	3
SW. quarter of NW. quarter	27	26	3
NE. quarter	28	26	3
N. half of NW. quarter	28	26	3
N. half of NE. quarter	29	26	3
SW. quarter of NE. quarter	1	27	3
N. half of SW. quarter	1	27	3

OSCODA COUNTY—Continued.

Descriptions.	Sec.	Town. north.	Range east.
SE. quarter of NW. quarter	9	27	3
NE. quarter of SW. quarter	9	27	3
S. half of NE. quarter	10	27	3
SE. half of NW. quarter	10	27	3
S. half of NW. quarter	11	27	3
S. half	15	27	3
SW. quarter of NW. quarter	16	27	3
SE. quarter of NE. quarter	20	27	3
W. half of NW. quarter	21	27	3
W. half of SW. quarter	21	27	3
SE. quarter of SW. quarter	21	27	3
SE. quarter	21	27	3
NE. quarter	22	27	3
W. half	22	27	3
N. half of SE. quarter	22	27	3
SE. quarter of SE. quarter	22	27	3
W. half of NW. quarter	23	27	3
NW. quarter of SW. quarter	23	27	3
Acres.			
Lot 2 ..... 35.05	10	25	3
28 Lot 3 ..... 50.25	10	25	3
NW. quarter of SE. quarter	4	26	3
NW. fractional quarter	7	26	3
SE. quarter of NE. quarter	8	26	3
E. half of NW. quarter	8	26	3
S. half	8	26	3
SE. quarter	9	26	3
S. half of NW. quarter	10	26	3
N. half of SW. quarter	10	26	3
NW. quarter of NW. quarter	14	26	3
NW. quarter of SW. quarter	14	26	3
NE. quarter of NE. quarter	15	26	3
SW. quarter	15	26	3
E. half of NE. quarter	16	26	3
S. half of SW. quarter	16	26	3
SE. quarter	16	26	3
E. half of NE. quarter	17	26	3
NW. quarter	35	27	3
NW. quarter of NW. quarter	36	27	3
NE. quarter of NW. quarter	6	28	3
S. half of SW. quarter	23	28	3
SW. quarter of SW. quarter	24	28	3
N. half	2	25	4
E. half of SW. quarter	2	25	4
NE. quarter	3	25	4
SE. quarter of SE. quarter	1	26	4
NE. quarter of NW quarter	7	26	4
N. half of SE. quarter	7	26	4
SE. quarter of SE. quarter	7	26	4
S. half	8	26	4
SW. quarter of NW. quarter	9	26	4
NE. quarter of SW. quarter	24	27	3
N. half of SW. quarter	25	27	3
SW. quarter of SW. quarter	25	27	3
S. half of NE. quarter	26	27	3
SE. quarter	26	27	3
W. half	26	27	3
SE. quarter	27	27	3
W. half	27	27	3
E. half	28	27	3
NW. quarter	28	27	3
E. half of SW. quarter	28	27	3
NW. quarter of SW. quarter	29	27	3
N. half	33	27	3

OSCODA COUNTY—Continued.

Descriptions.	Sec.	Town. north.	Range east.
NE. quarter of SE. quarter	33	27	3
NW. quarter of SW. quarter	34	27	3
N. half	34	27	3
NE. quarter of NE. quarter	35	27	3
SW. quarter of NE. quarter	35	27	3
E. half of SW. quarter	24	26	4
SE. quarter	24	26	4
E. half	25	26	4
SW. quarter	25	26	4
S. half of NE. quarter	26	26	4
SE. quarter	26	26	4
SE. quarter of SE. quarter	27	26	4
SE. quarter	34	26	4
S. half	35	26	4
N. half of NE. quarter	36	26	4
NW. quarter	36	26	4
NW. quarter of NW. quarter	15	27	4
SW. quarter of SW. quarter	23	27	4
SE. quarter of SE. quarter	23	27	4
29 NW. quarter of SW. quarter	9	26	4
SW. quarter of NE. quarter	16	26	4
SE. quarter of SW. quarter	16	26	4
NE. quarter of NE. quarter	24	26	4
NE. quarter of SW. quarter	34	27	4
NW. quarter of SE. quarter	34	27	4
SW. quarter of NW. quarter	30	28	4
ALCONA COUNTY.			
E. half of SW. quarter	1	25	5
SW. quarter of SW. quarter	1	25	5
SW. quarter of SW. quarter	2	25	5
W. half of NW. quarter	3	25	5
SE. quarter of NW. quarter	3	25	5
E. half of SW. quarter	3	25	5
S. half of SE. quarter	3	25	5
S. half of NE. quarter	6	25	5
W. half of NW. quarter	7	25	5
E. half of NW. quarter	10	25	5
W. half of NW. quarter	11	25	5
SE. quarter of NW. quarter	11	25	5
N. half of SW. quarter	11	25	5
N. half of NW. quarter	12	25	5
E. half of SW. quarter	14	25	5
W. half of NE. quarter	15	25	5
S. half of NW. quarter	17	25	5
NW. quarter of SW. quarter	17	25	5
NE. quarter of SE. quarter	18	25	5
E. half of NW. quarter	23	25	5
E. half of SW. quarter	23	25	5
W. half of NW. quarter	24	25	5
SE. quarter of NW. quarter	24	25	6
W. half	25	25	5
E. half	26	25	5
NE. quarter of NW. quarter	26	25	5
NE. quarter	30	25	5
S. half	3	26	5
N. half of SE. quarter	4	26	5
SW. quarter of SE. quarter	4	26	5
SE. quarter	5	26	5
N. half of NE. quarter	8	26	5
W. half	8	26	5

ALCONA COUNTY—Continued.

Descriptions.	Sec.	Town. north.	Range east.
SE. quarter	8	26	5
NW. quarter of NE. quarter	16	26	5
N. half of NW. quarter	16	26	5
W. half	17	26	5
SE. quarter	17	26	5
E. half	18	26	5
NE. quarter of SW. quarter	19	26	5
SW. quarter of NW. quarter	20	26	5
NE. quarter of SW. quarter	20	26	5
SE. quarter of SE. quarter	20	26	5
E. half of NW. quarter	28	26	5
SW. quarter of SW. quarter	28	26	5
SW. quarter	30	26	5
S. half of NE. quarter	33	26	5
N. half of NW. quarter	33	26	5
NE. quarter of SE. quarter	33	26	5
SW. quarter of SW. quarter	34	26	5
SE. quarter of SE. quarter	33	26	5
N. half of SW. quarter	36	26	5
30 SE. quarter of NW. quarter	28	25	5
SW. quarter	28	25	5
Entire	2	25	6
Entire	3	25	6
E. half	4	25	6
NW. quarter	4	25	6
E. half of SW. quarter	4	25	6
N. half	5	25	6
NE. quarter	10	25	6
E. half of NW. quarter	10	25	6
E. half of SE. quarter	10	25	6
N. half	11	25	6
N. half	12	25	6
S. half	14	25	6
E. half of NE. quarter	15	25	6
N. half of SE. quarter	15	25	6
W. half of NE. quarter	21	25	6
SE. quarter of NE. quarter	21	25	6
E. half of SW. quarter	21	25	6
SE. quarter	21	25	6
S. half of NE. quarter	22	25	6
S. half of NW. quarter	22	25	6
SW. quarter	22	25	6
W. half of NE. quarter	23	25	5
NW. quarter	23	25	6
W. half of SE. quarter	23	25	6
S. half of NE. quarter	25	25	6
SW. quarter	25	25	6
W. half of SE. quarter	25	25	6
NE. quarter of SE. quarter	25	25	6
W. half of NE. quarter	26	25	6
NE. quarter of SW. quarter	26	25	6
S. half of NW. quarter	24	28	6
Entire	1	25	6
NW. quarter	36	25	6
S. half of SW. quarter	9	26	6
SE. quarter	9	26	6
S. half of NE. quarter	10	26	6
S. half of NW. quarter	10	26	6
S. half	10	26	6
SW. quarter	11	26	6
S. half of SE. quarter	11	26	6
S. half of SW. quarter	12	26	6

ALCONA COUNTY—Continued.

Descriptions.	Sec.	Town. north.	Range east.
W. half of NE. quarter	13	26	6
SE. quarter of NE. quarter	13	26	6
NE. quarter of NE. quarter	13	26	6
W. half	13	26	6
SE. quarter	13	26	6
Entire	14	26	6
Entire	15	26	6
N. half	22	26	6
Entire	23	26	6
N. half	24	26	6
NW. quarter of SW. quarter	24	26	6
NE. quarter of SE. quarter	24	26	6
S. half of SE. quarter	24	26	6
SE. quarter of SW. quarter	24	26	6
NE. quarter	25	26	6
E. half of NW. quarter	25	26	6
NW. quarter of NW. quarter	25	26	6
N. half of SW. quarter	25	26	6
N. half of SE. quarter	25	26	6
E. half of SW. quarter	33	26	6
NW. quarter of SW. quarter	33	26	6
31 SW. quarter of SW. quarter	26	25	6
SE. quarter	26	25	6
W. half of NE. quarter	27	25	6
W. half	27	25	6
SE. quarter	27	25	6
Entire	28	25	6
S. half of NE. quarter	29	25	6
S. half	29	25	6
S. half of NE. quarter	31	25	6
S. half of NW. quarter	31	25	6
S. half	31	25	6
N. half	32	25	6
Entire	33	25	6
N. half of NE. quarter	34	25	6
SW. quarter of NE. quarter	34	25	6
W. half	34	25	6
NE. quarter of SE. quarter	34	25	6
SW. quarter of SE. quarter	34	25	6
E. half of NW. quarter	35	25	6
NE. quarter	35	25	6
NE. quarter	1	26	7
NE. quarter of NE. quarter	10	26	7
W. half of SE. quarter	12	26	7
SE. quarter of SE. quarter	13	26	7
W. half of NE. quarter	15	26	7
SE. quarter of NE. quarter	15	26	7
NW. quarter	15	26	7
N. half of SW. quarter	15	26	7
SW. quarter of SW. quarter	15	26	7
S. half of SE. quarter	17	26	7
W. half	18	26	7
Entire	19	26	7
SE. quarter	33	26	6
S. half of SW. quarter	14	28	6
SW. quarter of SE. quarter	14	28	6
E. half of SW. quarter	18	28	6
SW. quarter of SW. quarter	23	28	6
SE quarter of SE. quarter	23	28	6
SE. quarter of SE. quarter	31	28	6
NE. quarter of SW. quarter	34	28	6
NW. quarter of SE. quarter	34	28	6

ALCONA COUNTY—Continued.

Descriptions.	Sec.	Town. north.	Range east.
N. half of NW. quarter	3	25	7
NW. quarter	5	25	7
N. half	6	25	7
E. half of SW. quarter	6	25	7
SE. quarter	6	25	7
N. half	7	25	7
S. half	8	25	7
NW. quarter of SW. quarter	18	25	7
SE. quarter of NE. quarter	19	25	7
NE. quarter of SW. quarter	19	25	7
NW. quarter of SE. quarter	19	25	7
N. half of NW. quarter	10	25	8
W. half of SE. quarter	10	25	8
SE. quarter of SE. quarter	10	25	8
SW. quarter of NW. quarter	15	25	8
N. half of NE. quarter	17	25	8
NE. quarter of SE. quarter	21	25	8
NW. quarter of NE. quarter	32	25	8
S. half of NW. quarter	32	25	8
E. half of NE. quarter	33	25	8
SW. quarter of NE. quarter	33	25	8
NW. quarter of NW. quarter	33	25	8
SE. quarter of NW. quarter	33	25	8
32 NE. quarter	20	26	7
NW. quarter	20	26	7
SW. quarter	20	26	7
N. half of SE. quarter	20	26	7
N. half	21	26	7
SE. quarter	21	26	7
N. half of SW. quarter	21	26	7
N. half	22	26	7
NE. quarter of SW. quarter	22	26	7
SE. quarter	22	26	7
W. half of NW. quarter	23	26	7
N. half of SW. quarter	23	26	7
SE. quarter of SW. quarter	23	26	7
N. half of SE. quarter	23	26	7
SW. quarter of SE. quarter	23	26	7
S. half of NW. quarter	24	26	7
S. half	24	26	7
Entire	25	26	7
Entire	26	26	7
NE. quarter of NW. quarter	29	26	7
N. half of NE. quarter	29	26	7
N. half	30	26	7
NE. quarter	34	26	7
S. half of NW. quarter	34	26	7
N. half of SW. quarter	34	26	7
N. half of SE. quarter	34	26	7
N. half	35	26	7
SW. quarter	35	26	7
N. half of NW. quarter	36	26	7
W. half of SW. quarter	3	25	8
SE. quarter of SW. quarter	3	25	8
NE. quarter of NW. quarter	4	25	8
S. half of NW. quarter	34	25	8
SE. quarter of SW. quarter	8	26	8
W. half of SE. quarter	8	26	8
N. half	17	26	8
S. half of SW. quarter	17	26	8
E. half	18	26	8

ALCONA COUNTY—Continued.

Descriptions.	Sec.	Town. north.	Range east.
E. half of SW. quarter	18	26	8
SW. quarter of SW. quarter	18	26	8
S. half of NE. quarter	19	26	8
W. half	19	26	8
S. half of SE. quarter	19	26	8
W. half	20	26	8
S. half of SW. quarter	28	26	8
W. half of SE. quarter	28	26	8
NE. quarter of NW. quarter	29	26	8
W. half of NW. quarter	29	26	8
W. half of SW. quarter	29	26	8
W. half of SE. quarter	29	26	8
NE. quarter	30	26	8
N. half of NW. quarter	30	26	8
SE. quarter	31	26	8
N. half	32	26	8
SW. quarter	32	26	8
N. half	33	26	8
N. half of SW. quarter	33	26	8
SE. quarter of SW. quarter	33	26	8
	Acres.		
Lot 3 (W. half SE)	45.89	23	25	9
Lot 1	56.40	26	25	9
W. half of NW. quarter		26	25	9
Lot 3 (NE. SW)	32.76	26	25	9
Lot 4 (S. half SW)	58.00	26	25	9
33 E. half of SE. quarter		4	25	8
SW. quarter of SE. quarter		4	25	8
SE. quarter of SE. quarter		8	25	8
NE. quarter of NE. quarter		9	25	8
S. half of SE. quarter		9	25	8
S. half of SW. quarter		9	25	8
NW. quarter of NE. quarter		10	25	8
S. half of SW. quarter		30	25	9
NW. quarter of SE. quarter		31	25	9
SE. quarter of NE. quarter		33	25	9
	Acres.		
Lot 1	44.30	35	25	9
Lot 2	35.25	35	25	9
Lot 3	45.76	35	25	9

ROSCOMMON COUNTY.

N. half	4	23	1
S. half	10	23	1
NE. quarter of SW. quarter	5	24	1
E. half of SW. quarter	15	23	2
W. half	18	24	2
E. half of NE. quarter	30	24	2

OTSEGO COUNTY.

Entire	12	29	1
Entire	34	30	1
	Acres.		
Lot 1	65.40	36	30	1
Lot 2	62.00	36	30	1
Lot 3	49.32	36	30	1
N. half	36	30	1

34 *Subpœna.*

STATE OF MICHIGAN, *ss:*

The circuit court for the county of Iosco. In chancery.

{SEAL OF THE CIRCUIT COURT IOSCO COUNTY, MICH.} In the name of the people of the State of Michigan to Charles Winchester, George E. Wasey, Aaron F. Gay, Henry N. Loud, Herbert F. Whiting, greeting:

You are hereby notified that a bill of complaint has been filed against you in the circuit court for the county of Iosco, in chancery, by Henry M. Loud, as complainant, and that if you desire to defend the same you are required to have your appearance entered with the register of said court at his office, in the village of Tawas City, in person or by solicitor, within twenty days after the 25th day of September, in the year 1881, which is the return day of this writ. Hereof fail not under the penalty of having said bill taken as confessed against you.

Witness the Hon. J. B. Tuttle, circuit judge, at Tawas City, this 9th day of September, in the year of our Lord one thousand eight hundred and eighty-one.

HIRAM E. HOARD, *Register.*

D. C. HOLBROOK, *Sol'r for Compl't.*
B. HANCHETT, *of Counsel.*

35 STATE OF MICHIGAN,
Iosco County, ss:

I hereby certify and return, that on the 13th day of September, A. D. 1881, I served the within subpœna personally on Aaron F. Gay and Henry N. Loud, two of the within-named defendants, by delivering to them the said defendants, at the village of Oscoda, in said county, a true copy of the within subpœna, inscribed "copy," and subscribed D. C. Holbrook, complainant's solicitor, and at the same time I showed Aaron F. Gay and Henry N. Loud, two of the defendants, the original subpœna, with the seal of the court impressed thereon.

Dated this 13th day of September, 1881.

My fees: Service, $.75; travel, 1.50; copies, 50; total, $2.75.

JAMES QUINN, *Sheriff.*

36 STATE OF MICHIGAN:

In the circuit court for the county of Iosco. In chancery.

HENRY M. LOUD, PLAINTIFF,
vs.
CHARLES WINCHESTER, HENRY N. LOUD, HERBERT F. Whiting, George E. Wasey, and Aaron F. Gay, defendants.

To the honorable the circuit court for the county of Iosco, in chancery:

The petition of Charles Winchester, one of the defendants in the above-entitled cause, respectfully shows:

1. That a suit was commenced on or about the 9th day of September, A. D. 1881, in the circuit court for the county of Iosco, in chancery, by the above-named plaintiff, against the above-named defendants.

2. That the said plaintiff is and was at the time said suit was commenced a citizen of the State of Michigan.

3. That your petitioner is and was at the time said suit was commenced a citizen of the State of Massachusetts, residing at Ashburnham, in the State of Massachusetts, and that the principal controversy in said suit is wholly between said plaintiff and your petitioner, who are citizens of different States, and which controversy can be fully determined as between them, and that your petitioner is actually interested in said controversy.

4. That the matter in dispute in said suit between said plaintiff and your petitioner exceeds the sum and value of five hundred dollars, exclusive of costs.

37 5. That your petitioner, one of said defendants, is ready and willing to give good and sufficient surety as this court may direct for doing all the acts and things required to be done by the provisions of law upon the removal of the said suit into the circuit court of the United States, and offers herewith the bond of Hiram J. Beakes and Augustus C. Stellwagen in the penal sum of three hundred dollars, conditioned that your petitioner shall enter in the next circuit court of the United States for the eastern district of Michigan, on the first day of its next session, a copy of the record in the said suit, and for paying all costs that may be awarded by the said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, and doing such other appropriate acts as by the acts of Congress are required to be done upon the removal of a suit into the said circuit court of the United States.

Wherefore your petitioner prays that the said bond may be accepted as good and sufficient surety according to the said provisions of law; that your petitioner may have leave to remove the said cause into the said circuit court of the United States pursuant to the statute in such case made and provided, and that all further proceedings in this court may be stayed.

And your petitioner will ever pray, &c.

CHARLES WINCHESTER,
By BEAKES, CUTCHEON & STELLWAGEN,
His Solicitors.

BEAKES, CUTCHEON & STELLWAGEN,
Solicitors for Defendant Charles Winchester.

STATE OF MICHIGAN,
County of Wayne, ss:

On this 14th day of September, A. D. 1881, before me personally appeared George E. Wasey and made oath that he is the agent of the
38 above-named Charles Winchester, and makes this affidavit in his behalf, and that he, the said George E. Wasey, has heard read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, and that the said Charles Winchester is now absent from the State of Michigan.

GEO. E. WASEY.

Subscribed and sworn to before me this 14th day of September, A. D. 1881.

HENRY M. DUFFIELD,
Notary Public, Wayne Co., Mich.

39 Know all men by these presents that we, Charles Winchester, Hiram J. Beakes, and Augustus C. Stellwagen, are held and firmly bound unto Henry M. Loud in the sum of three hundred dollars, lawful money of the United States of America, to be paid to the said Henry M. Loud, his executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and each of them, firmly by these presents. Sealed with our seals, dated the 14th day of September, A. D. 1881.

Whereas the said Henry M. Loud, as plaintiff, has commenced against Charles Winchester, Henry N. Loud, Herbert F. Whiting, George E. Wasey, and Aaron F. Gay, as defendants, a certain suit in the circuit court for the county of Iosco, in chancery; and whereas the said Charles Winchester, one of said defendants, has filed his petition in the said circuit court for the county of Iosco, in chancery, for the removal of said suit into the next circuit court of the United States for the eastern district of Michigan:

Now, therefore, the condition of this obligation is such that if the above-named Charles Winchester shall enter, or cause to be entered, in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and do, and cause to be done, such other appropriate acts as are required to be done upon the removal of a suit into the circuit court of the United States, and shall pay all costs that may be awarded by the said circuit court, if such court shall hold that such suit was wrongfully or improperly removed thereto, then the above obligation shall be void; otherwise it shall remain in full force and virtue.

CHARLES WINCHESTER, [SEAL.]
By BEAKES, CUTCHEON & STELLWAGEN,
His Attorneys.

HIRAM J. BEAKES. [SEAL.]
AUGUSTUS C. STELLWAGEN. [SEAL.]

40 STATE OF MICHIGAN,
County of Wayne, ss:

Hiram J. Beakes and Augustus C. Stillwagen, the sureties named in the foregoing obligation, being duly sworn, each for himself says that he is a resident of the State of Michigan, and is worth the sum of three hundred dollars over and above all just debts and liabilities subject to execution.

HIRAM J. BEAKES.
AUGUSTUS C. STILLWAGEN.

Subscribed and sworn to before me this 14th day of September, A. D. 1881.

HENRY M. DUFFIELD,
Notary Public in and for Wayne County, Mich.

(Filing marks:) The circuit court for the county of Iosco. In chancery. Henry M. Loud vs. Charles Winchester et al. Petition and bond for removal of suit. Filed September 16, 1881. Hiram E. Hoard, register.

41 STATE OF MICHIGAN.

In the circuit court for the county of Iosco. In chancery.

HENRY M. LOUD, COMPL'T,
vs.
CHARLES WINCHESTER, HENRY N. LOUD, HERBERT F. WHITING, GEORGE E. WASEY, and AARON F. GAY, def'ts.

In this cause it appearing that the defendant Charles Winchester, on the 16th day of September, A. D. 1881, filed in this court his petition and bond with good and sufficient surety for the removal of this cause to the circuit court for the United States for the eastern district of Michigan, it is therefore ordered that said petition and bond be accepted.

Dated October 15, 1881.

J. B. TUTTLE,
Circuit Judge.

(Filing marks:) Order accepting bond & petition. Filed October 17, A. D. 1881. Hiram E. Hoard, register in chancery, by J. O. Whittemore, deputy register.

42 STATE OF MICHIGAN,
County of Iosco, ss:

I, Hiram E. Hoard, register of the circuit court for the county of Iosco, in chancery, do hereby certify that the above and foregoing are true copies of the record files and proceedings in the suit therein mentioned in said court, and of the whole thereof, and that I have compared the same with the originals on file and of record in said circuit court for the county of Iosco, in chancery.

In testimony whereof I have hereto set my hand and affixed the seal of said court this 18th day of October, A. D. 1881.

[L. S.] HIRAM E. HOARD,
Register in Chancery.

43, 44 *Order for appearance of def't Winchester.—Entered Nov. 1st, 1881.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

HENRY M. LOUD, COMPL'T,
vs.
CHARLES WINCHESTER, HENRY N. LOUD, HERBERT F. WHITING, GEORGE E. WASEY, and AARON F. GAY, def'ts.

In this cause, on motion of Beakes, Cutcheon & Stillwagen, solicitors for said defendants Charles Winchester, it is ordered that the appearance of said defendant be, and the same is hereby, entered, and, on like motion, it is further ordered that said complainant or his solicitors deliver a copy of the bill of complaint in this cause to the said solicitors for said defendant

Charles Winchester within twenty days after the service upon the solicitor for said complainant of notice of this order.

Dated Nov. 1, 1881.

BEAKES, CUTCHEON & STILLWAGEN,
Sol'rs for Def't Winchester.

45, 46 *Order for appearance of def't Gay.—Entered Nov. 7th,* 1881.

In the circuit court of the United States for the eastern district of Michigan.

HENRY M. LOUD, COMPL'T,
vs.
CHARLES WINCHESTER, HENRY N. LOUD, Herbert F. Whiting, George E. Wasey, and Aaron F. Gay, defendants.

In this cause, on motion of Beakes, Cutcheon & Stillwagen, solicitors for said defendant Aaron F. Gay, it is ordered that the appearance of said defendant be, and the same is hereby, entered, and, on like motion, it is further ordered that said complainant or his solicitor deliver a copy of the bill of complaint in this cause to the said solicitors for said defendant Aaron F. Gay within twenty days after service upon the solicitor for said complainant of notice of this order.

Dated November 7, 1881.

BEAKES, CUTCHEON & STILLWAGEN,
Sol'rs for Def't Aaron F. Gay.

47, 48 *Precipe for appearance of Wasey & Whiting.—Filed November 7th,* 1881.

In the circuit court of the United States for the eastern district of Michigan. In equity.

HENRY M. LOUD, COMPL'T,
vs.
CHARLES WINCHESTER, GEORGE E. WASEY, Aaron F. Gay, Herbert N. Loud, & Herbert F. Whiting, def'ts.

Case removed from Iosco circuit court.

To clerk of said court:

Please enter appearance of George E. Wasey & Herbert F. Whiting, defendants above named, by us, as their solicitors, with usual order for a copy of the bill of complaint in said cause.

Yours, &c.,
(Sig'd) GRIFFIN, DICKINSON, THURBER & HOSMER.

NOV. 7, 1881.

49 HENRY M. LOUD, COMPLAINANT,
vs.
CHARLES WINCHESTER, GEORGE E. WASEY, Aaron B. Gay, Henry N. Loud, & Herbert F. Whiting, defendants.

2776. In equity.

On filing precipe in this cause, and on motion of Griffin, Dickinson, Thurber and Hosmer, solicitors for defendants George E. Wasey and Her-

bert F. Whiting, named thereon, ordered that the appearance of said defendants George E. Wasey and Herbert F. Whiting be, and the same is hereby, entered by them as their solicitors. And, on like motion, it is further ordered that said complainant serve upon said defendants George E. Wasey and Herbert F. Whiting a copy of the bill of complaint filed in said cause within the time limited and prescribed by the rules and practice of this court.

Entered by order of—

GRIFFIN, DICKINSON,
THURBER & HOSMER,
Sol'rs for Def'ts Wasey & Whiting.
Pr. A. MANDELL, *Cl'k.*

50 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room in the city of Detroit, on Monday, the twenty-first day of November, in the year one thousand eight hundred and eighty-one.

Present, honorable Henry B. Brown, district judge.

HENRY M. LOUD, COMPLAINANT,
vs.
CHARLES WINCHESTER ET AL., DEFENDANTS. } 2776. In equity.

The motion of complainant to remand this cause to the circuit court for the county of Iosco, now coming on to be heard, it is argued by Mr. Holbrook, solicitor for complainant, in support thereof, and by Messrs. Beakes, Cutcheon & Dickinson, in opposition thereto, and submitted for decision.

51 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Monday, the twenty-eighth day of November, in the year one thousand eight hundred and eighty-one.

Present, honorable Henry B. Brown, district judge.

HENRY M. LOUD, COMPLAINANT,
vs.
CHARLES WINCHESTER, HENRY N. LOUD, Herbert F. Whiting, George E. Wasey, & Aaron F. Gay, defendants. } 2776. In equity.

The motion to remand this cause to the circuit court for the county of Iosco, having been heretofore argued & submitted, and the same having been duly considered, it is now by this court ordered that this cause be, and the same is hereby, remanded to said circuit court for the county of Iosco in the State of Michigan.

52 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room in the city of Detroit, on Thursday,

the eighth day of December, in the year one thousand eight hundred and eighty-one.

Present, honorable Henry B. Brown, district judge.

HENRY M. LOUD, COMPLAINANT, *vs.* CHARLES WINCHESTER, HENRY N. LOUD, HERBERT F. WHITING, GEORGE E. WASEY, and AARON F. GAY, defendants.	2776.	In equity.

Now comes the said defendant Charles Winchester, by Messrs. Beakes, Cutcheon and Stellwagen, his solicitors, and in open court claims an appeal to the Supreme Court of the United States from an order of this court entered in this cause on the twenty-eighth day of November, A. D. 1881, remanding this cause to the circuit court for the county of Iosco in the State of Michigan, in chancery. And on motion of said solicitors, it is ordered that said appeal be, and the same is hereby, allowed, and it is further ordered that the said defendant Charles Winchester, give the usual bond on appeal, in the sum of five hundred dollars.

53 Know all men by these presents that we, Charles Winchester, Emory Wendell, and Lorenzo E. Clarke, are held and firmly bound unto Henry M. Loud in the full and just sum of five hundred dollars, to be paid to the said Henry M. Loud, his certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 8 day of December, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas a suit was lately commenced in the circuit court for the county of Iosco, in the State and eastern district of Michigan, in chancery, by the above-named Henry M. Loud, as complainant, against Charles Winchester, Aaron F. Gay, George E. Wasey, Henry M. Loud, and Herbert F. Whiting, as defendants; and

Whereas said Charles Winchester, on the 16th day of September, A. D. 1881, filed his petition and bond in the form required by the statutes of the United States, made and provided for the removal of a suit from a State court to a federal court, in said circuit court for the county of Iosco, in chancery, for the removal of said suit from said court to the circuit court of the United States for the eastern district of Michigan; and

54 Whereas said circuit court for the county of Iosco, in chancery, on the fifteenth day of October, A. D. 1881, duly accepted said petition and bond by an order made on that day; and

Whereas a copy of the record in said suit was duly entered in said circuit court of the United States for the eastern district of Michigan, on the first day of the then next session of said last-named court after the filing of said petition and bond in said State court as aforesaid; and

Whereas, on motion of said complainant, said circuit court of the United States for the eastern district of Michigan, in equity, by an order made on the 28th day of November, A. D. 1881, remanded said suit to said circuit court for the county of Iosco, in chancery; and

Whereas said Charles Winchester has appealed from said order of said

circuit court of the United States for the eastern district of Michigan, in equity, remanding said suit to said State court, to the Supreme Court of the United States:

Now the condition of this obligation is such that if the above bounden Charles Winchester shall prosecute his said appeal to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

(S'g'd) CHARLES WINCHESTER. [L. S.]
(") EMORY WENDELL. [L. S.]
(") L. E. CLARKE. [L. S.]

Approved.
(S'g'd) H. B. BROWN.

55 EASTERN DISTRICT OF MICHIGAN, *ss:*

Emory Wendell and Lorenzo E. Clark, being duly sworn, each for himself says that he is a resident of said eastern district of Michigan, and is the owner of property situated in said district subject to execution exceeding in value the sum of five hundred dollars over and above all exemptions and liabilities, and that he has signed the within bond of Charles Winchester.

(S'g'd) L. E. CLARK.
(") EMORY WENDELL.

Subscribed & sworn to before me, at Detroit, in said district, this 8th day of December, A. D. 1881.

(S'g'd) J. S. JENKINS,
Notary Public, Wagner County, Mich.

(Endorsed:) Rec'd, approved, & filed December 8, 1881. A. Mandell, cl'k, by Jno. Graves, dep'y cl'k.

56 In the circuit court of the United States for the eastern district of Michigan. In equity.

HENRY M. LOUD, COMPLAINANT,
vs.
CHARLES WINCHESTER, AARON F. GAY, GEORGE E. WASEY, HENRY N. LOUD, and HERBERT F. WHITING, defendants.

Please prepare a transcript of the record in this cause, to be filed in the Supreme Court of the United States, on the appeal of said defendant Charles Winchester to said Supreme Court.

Dated December 9, 1881.

BEAKES, CUTCHEON & STILLWAGEN,
Sol'rs for Def't Winchester.

To the CLERK of said court.

(Endorsed:) Filed in clerk's office Dec. 9th, 1881. A. Mandell, clerk.

57 EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Addison Mandell, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify the above and foregoing transcript to be a true copy of the record, files, pleadings, papers, and proceedings on file and of record in the case of Henry M. Loud, complainant, against Charles Winchester, Henry N. Loud, Herbert F. Whiting, George E. Wasey, and Aaron F. Gay, defendants, in said court; that I have compared the same with the originals thereof of record and on file in my office, and the same are true copies thereof and of the whole thereof.

In witness whereof I have hereunto set my hand and the seal of said court, at Detroit, this twenty-sixth day of May, A. D. 1882.

[SEAL.] ADDISON MANDELL, *Clerk.*

Clerk's fees, 27.35.

(Indorsement on cover:) No. 924. Charles Winchester, appellant, vs. Henry M. Loud. E. Michigan C. C. U. S. Filed 16th September, 1882.

OFFICE SUPREME COURT U.S.
FILED
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JAMES H. McKENNEY, Clerk.

108-180

SUPREME COURT of the UNITED STATES

CHARLES WINCHESTER, Appellant, v. HENRY M. LOUD.

No. 924, OCTOBER TERM, 1882.

Argument of S. M. CUTCHEON, for Appellant.

SUPREME COURT OF THE UNITED STATES.

CHARLES WINCHESTER,
Appellant.
vs.
HENRY M. LOUD,
Appellee.

No. 924,
Oct. Term, 1882.

BRIEF OF S. M. CUTCHEON FOR APPELLANT, CHARLES WINCHESTER.

I.

STATEMENT OF THE CASE.

The question involved in this appeal is the validity of an order made by the Circuit Court of the United States for the Eastern District of Michigan, in equity, remanding this suit to the state court in which the bill was filed.

1. This suit was commenced by a bill filed in the Circuit Court for the county of Iosco, in the State of Michigan, in chancery.

2. The plaintiff is Henry M. Loud, a citizen of the State of Michigan. The defendants are Henry N. Loud, George E. Wasey and Aaron F. Gay, citizens of the State of Michigan, and Charles Winchester and Herbert F. Whiting, citizens of the State of Massachusetts.

3. The appellant, Charles Winchester, on the 16th day of September in the year 1881, presented a petition to the aforesaid state court under the second section of the Act of March 3d, 1875, which petition contained the averments required by statute, and represented that there was in this suit a controversy wholly between the plaintiff and the petitioner, and which could be fully determined as between them, and that the petitioner was actually interested in such controversy. (Record, pp. 24–5.)

4. This petition was accompanied by the statutory bond.

5. On the 15th day of October, 1881, the aforesaid state court made an order that the said petition and bond be accepted. (Record, p. 27.)

6. On the first day of November in the year 1881, the appellant, Charles Winchester, entered a copy of the record in this suit in the Circuit Court of the United States for the Eastern District of Michigan.

7. The Circuit Court of the United States for the Eastern District of Michigan, on the 28th day of November in the year 1881, upon the motion of the appellee, remanded this suit to the state court. (Record, p. 29.)

8. On the 8th day of December in the year 1881, the appellant, Charles Winchester, appealed from said last named order to this court. (Record, pp. 29, 30.)

9. The appellant docketed this cause and filed the record therein on the 16th day of September, 1882.

II.

Assignment of Error.

The appellant alleges that the order of the Circuit Court of the United States remanding this suit is erroneous, because there is in this suit a controversy wholly between the plaintiff and appellee Henry M. Loud, and the defendant and appellant Charles Winchester, and which can be fully determined as between them.

III.

ABBREVIATION OF THE PLAINTIFF'S BILL.

I.

Partnerships.

That in the year 1870, the plaintiff and the defendant Gay, as co-partners, were the owners of certain property, which they had purchased of other firms, of which firms they, George C. Winchester and the appellant, had been members. That after the year 1870, the plaintiff and the defendant Gay continued business under the name of Loud, Gay & Co. (Record, p. 2.)

II.

Business and Property.

That the several firms had been engaged in the business of manufacturing lumber and buying pine lands, and prior to January, 1876, had purchased about 90,000 acres of pine lands; that they owned all the personal property necessary for the manufacture, sale and transportation of salt and lumber. (Record, p. 2.)

III.

Real Estate Transactions.

That during the existence of said partnerships certain land contracts were assigned by the plaintiff and Gay to the appellant as security for debts which they owed him, and upon such contracts the appellant had received deeds for the lands mentioned in such contracts, and held the title to said lands, which comprised about 19,400 acres, as a security for such indebtedness; that the plaintiff and Alanson R. Loud held certificates of purchase from the United States for about 13,000 acres of land, which certificates, by changes in the firms, became the property of the plaintiff and Gay; that George C. Winchester fraudulently obtained possession of said certificates, and thereby procured patents for about 13,000 acres of land in his own name, and afterwards transferred the title to about 10,000 acres of said lands so procured to the defendant Winchester, who had knowledge of the rights of the plaintiff and Gay. After so receiving the title to about 10,000 acres of said lands, the appellant claimed to hold the same as a further security; that all the real and personal property in this bill mentioned belonged to the plaintiff and the defendant Gay "as partners and partnership property." (Record, pp. 2, 3.)

IV.

Indebtedness to Appellant.

That said partnerships were indebted to the appellant in large sums of money, which indebtedness was assumed by the plaintiff and Gay. Part of this indebtedness was for the appellant's interest in former partnerships, and as a security for a portion of it he had taken the title in his own name as aforesaid. The appellant also held mortgages on other lands. (Record, p. 3.)

V.

Settlement.

That a settlement was had between the plaintiff, the defendant Gay, and the appellant, of the amount of the indebtedness of the former to the latter; and on such settlement the appellant agreed to take the sum of $275,000 and interest at five per cent. in full of all his claims and demands against the plaintiff and Gay, on condition that the same should be secured to him upon all of said property and that the plaintiff should assign to the appellant a demand of about $10,000 against the said George C. Winchester and the appellant. The plaintiff assigned said demand to the appellant. (Record, p. 3.)

Conveyance.

On the first day of January in the year 1877, for the purpose of securing said debt, the plaintiff and his wife and the defendant Gay

and his wife, conveyed to the appellant and his heirs "by descriptions" and "by a general clause in said deed" all their right, title and interest in and to any lands situated in the State of Michigan "not heretofore conveyed to said Winchester," and also transferred to said Winchester "all the personal property which they owned or had any interest in, and which said property, real and personal, *is* worth at least the sum of $800,000. (Record, pp. 3 and 4.)

VI.

Deed in Trust.

To carry out the said agreement, the defendant Charles Winchester and his wife on the first day of January in the year 1877, conveyed all the aforesaid lands and personal property to the defendants Whiting, Loud and Wasey "in trust."

First. To carry on therewith "a general lumber and salt business."

Second. To sell and convey any and all of said property, and to hold any property purchased by them subject to the trust.

Third. The proceeds of the business and sales of property, excepting the real estate, were to be applied by the trustees as follows:

1. The expenses of executing the trust.
2. The payment of such existing liens on any portion of said property as the trustees might deem best for the protection thereof, *and for the benefit of said Charles Winchester.*
3. The remainder of the proceeds was to be paid to the said Winchester, his heirs, executors or assigns.
4. The proceeds of any real estate sold were to be paid directly to said Winchester.
5. These trustees were to account to the defendant Winchester on the first day of January in each year, and as much oftener as he or they might desire.
6. The request of Winchester was to control the discretion of the trustees in the appointment of their agents.
7. This trust was to continue ten years and then the remaining property was to be conveyed to the appellant by the trustees. (Record, pp. 4 and 5.)

VII.

Declaration of Trust.

That the defendant Winchester executed, contemporaneously with the trust deed and as a part thereof, a declaration of trust, wherein he declared that upon the payment to him by said trustees of the sum of $275,000 and interest at the rate of five per cent. in installments, that the property then remaining on hand should be reconveyed to the plaintiff and the said Gay, and said trust should cease, which declaration of trust is now in the possession of said Winchester. (Record, p. 5.)

Possession.

That the said trustees in pursuance of said deed and declaration of trust took possession of all said property, and from thence have carried on said business. (Record, p. 5.)

VIII.

Deeds Mere Security.

That the said deeds and the said declaration of trust were made for the sole purpose of securing to the defendant Winchester the sum of $275,000 and interest. (Record, p. 5.)

Lands not Subject to Trust.

That the defendant Winchester "as part of said settlement" agreed to perfect in himself the title to about 3,000 acres of land patented to George C. Winchester as aforesaid, and hold the same as a part of said trust, which last-mentioned lands are of the value of $50,000, and such value ought to be applied on said debt. (Record, pp. 5 and 6.)

IX.

Acts of Winchester.

1. That November 23, 1880, the appellant, Winchester, gave a written notice of the cancellation of said trust to the said trustees, and that the same was at an end; that he is now managing and disposing of said property, and claims that it is his own, and that said trustees are managing it simply as agents for him, and he denies that the plaintiff has any right or title in it. (Record, p. 6.)
2. That the acts and conduct of said Winchester are in repudiation of said trust, and a fraud upon the plaintiff. (Record, p. 9.)

Acts of the Trustees.

1. That out of the proceeds of the business they have purchased pine lands at a cost of $30,000, and have rebuilt a saw mill and salt block, destroyed by fire. (Record, p. 6.)
2. That as copartners, they have conducted said business under the name of the Oscoda Salt and Lumber Company. (Record, p. 6.)
3. That Gay and Wasey, in combination with the appellant, assent to the latter's claim of absolnte ownership of the property. (Record, p. 6.)
4. That said property and business are now carried on "as the individual and sole interest of said Winchester." (Record, p. 6.)

5. That this transaction cannot be ascertained from their books of account. (Record, pp. 6, 7.)

6. That the correspondence is carried on by Gay, Wasey and their book-keeper, in their individual names. (Record, p. 6.)

7. That Gay and Wasey act as the appellant's agents, and fix their own salaries. (Record, p. 7.)

8. That Gay and Wasey deny that the plaintiff has any interest in the business, property or trust. (Record, p. 7.)

9. That Wasey and Gay have substantially deprived the defendant, Henry N. Loud, of any part in the management of the business for the reason that he favored an economical management, and the payment of said debt and interest. (Record, pp. 7, 8.)

10. That Gay and Wasey are extravagant in management, and intentionally so manage the property, that the debt shall remain unpaid. (Record, p. 8.)

11. That Gay and Wasey, with Winchester's knowledge, keep a book-keeper in their employ, who refuses to recognize Henry N. Loud's authority. (Record, p. 8.)

12. That Gay, as an employé of Winchester, claims an equal authority with Wasey in the management of the business and property. (Record, p. 8.)

13. That Whiting assents to Winchester's claim, and also to the management of Gay and Wasey. (Record, pp. 8, 9.)

14. That the acts of Whiting, Gay and Wasey, are in repudiation of the trust. (Record, p. 9).

Gay makes no Claim.

"The said Gay for himself claims that he does not make any claim as a *cestui que trust* in said property." (Record, p. 7.)

Personal Property.

That the proceeds of said property will yield for the present year about $330,000, which will pay all business liabilities, necessary investments and repairs, and leave a surplus of $150,000. That $100,000 of this surplus should be applied on Winchester's debt, and a like sum can be paid yearly thereafter. If the trustees had acted in pursuance of the trust, they could have heretofore paid the appellant $25,000 per annum, except the first year. (Record, p. 7).

Lands purchased by Trustees.

They belong to and constitute a part of said trust, and should be treated as the lands mentioned in Exhibit "A." (Record, p. 9).

X.

Special Relief prayed as to Appellant.

1. That the writings mentioned may be declared to be in full force, and in the nature of a trust, and in the nature of a security. (Record, p. 9.)
2. That he may be declared to hold all the aforesaid lands "as security in said trust for said debt." (Record, p. 9.)
3. That any lands purchased by him from the proceeds of the business may be decreed to be a part of said trust. (Record, p. 9.)
4. That upon the payment of $275,000 and interest, a reconveyance be made to the plaintiff and Gay. (Record, p. 9.)
5. That he be personally charged with all moneys received in said business. (Record, p. 9.)
6. That he account for the sales of any of said lands. (Record, pp. 9, 10.)
7. That he account "for the value of said 3,000 acres, the title to which he agreed to obtain as above stated. (Record, p. 10.)

Special Relief prayed as to Trustees.

1. That Wasey, Loud and Whiting be restrained from contravening the terms of said trust. (Record, p. 9.)
2. That Wasey and Whiting be removed. (Record, p. 9.)
3. That until removal they be decreed to execute the trust for the payment of the debt. (Record, p. 9.)
4. That the trustees be ordered to render an account. (Record, p. 10.)

Special Relief prayed as to Gay.

1. That he be declared to have no authority except as an employé of the trustees. (Record, p. 10.)

Immaterial Allegations.

1. That George C. Winchester fraudulently obtained possession of certain certificates of purchase and thereby procured patents for certain lands in his own name. (Record, pp. 2, 3.)
2. That he afterwards transferred the title to about 10,000 acres of these lands so procured to the appellant Winchester, who had knowledge of the rights of the plaintiff and Gay in said lands (Record, p. 3).
3. That the appellant, from the time of such transfer until the settlement and execution of the deeds, held the title to said lands for the plaintiff and Gay, as the equitable owner of said lands (Record, p. 3.)
4. That the appellant, after receiving the transfer of said lands "claimed to hold the same as a further security for the indebtedness owing to him" by the plaintiff and Gay. (Record, p. 3.)

Waiver of Alleged Fraud.

1. The plaintiff alleges in the fifth paragraph of his bill that a settlement was had between Loud & Gay and the appellant; that upon such settlement the appellant agreed to take $275,000 of his debt and interest thereon at five per cent. in full of all demands, but upon condition that the same should be secured upon all of said property, which security the plaintiff and Gay agreed to give. (Record, p. 5.)

2. That in pursuance of such settlement the plaintiff and Gay executed to the appellant a deed which conveyed to him all the lands in the State of Michigan, in which the plaintiff and Gay "had any interest, legal or equitable." (Record, pp. 5, 6.)

3. In other words, after all the transactions of the appellant, which the plaintiff alleges to be fraudulent, had come to his knowledge, he had a full settlement with the appellant, and upon such settlement the plaintiff and Gay executed said conveyance.

4. If the plaintiff ever had a right to complain of this alleged fraud on the part of the appellant, he certainly has waived it by voluntarily joining Gay in the execution and delivery of the deed to the appellant with full knowledge of the facts.

5. The plaintiff does not allege that there was either fraud, accident or mistake in the execution of the last named deed, and, therefore, all the averments which would render any deed procured by the appellant prior to the first day of January, 1877, voidable, are immaterial, because the conveyance made on that day made the title absolute, which before that time had been voidable.

6. Any steps taken by a party in affirmance of a conveyance, which he knows to be voidable on account of fraud, deprives him of all right to complain of its invalidity. Ratification of a fraudulent conveyance with full knowledge of the facts, is a waiver of any fraud in its execution and procurement.

V.

Controversies.

There are three combined in this suit.

1. Whether the appellant is the owner in fee simple of the land mentioned in the bill, and the trustees are simply his agents acting under an express power, or whether the appellant holds the title to the aforesaid land as a mere security for the payment of a certain sum of money by the trustees for the plaintiff and Gay. (Record, pp. 5, 6 and 9.)

2. Whether, as a part of said settlement the appellant agreed with the plaintiff and Gay to obtain and perfect in himself the title to about 3,000 acres of land, patented to George C. Winchester, and hold the same subject to the said trust, and that on account of a failure to perform such agreement on the part of the appellant, he should be

charged with the value of such lands, which is alleged to be the sum of $50,000. (Record, pp. 5, 6.)

3. Whether the trustees appointed by the deed in trust have been guilty of the misconduct alleged in the plaintiff's bill. (Record, pp. 6, 7, 8 and 9.)

VI.

First Controversy.

1. The plaintiff in the eighth paragraph of his bill alleges, in substance and effect, that the conveyance to the appellant, the deed in trust, and the declaration in trust, were executed with the understanding of all the parties for the sole purpose of securing to said Winchester the payment of $275,000 and interest, and for no other purpose whatsoever. (Record, p. 5.)

2. In the ninth paragraph of the bill the plaintiff states Winchester's side of the controversy as follows: "That said Winchester, on or about the twenty-third day of November, 1880, determined to repudiate said trust, and formed the design to hold, control and dispose of said property as his own, and without any reference to any right of your orator therein, and gave a written notice to said trustees that he cancelled said trust, and that the same was at an end. And in pursuance of said design he is now managing and disposing of said property, and he denies that he is bound by said trust, and denies that your orator has any right or title in said property, and denies that the same is held, or ought to be held and managed by said trustees for the payment of said sum and the interest to him, and now claims that said property is his own, and that said trustees are managing simply as agents for him, and declares he will not accept said $275,000 and interest for his said debt, unless compelled, and refuses to state what sum he will take." (Record, p. 6).

3. This claim by the defendant Winchester goes to the foundation of every claim alleged by the plaintiff in his bill.

4. The facts and circumstances alleged in the bill support the appellant's claim in this controversy.

Conveyance to Winchester.

1. The title to all the lands mentioned in the plaintiff's bill vested in the appellant by this conveyance.

2. The plaintiff alleges this to be the legal effect of this instrument in the fifth paragraph of his bill, "By means of which deed and other deeds before then executed to said Winchester, there was conveyed to said Winchester all the lands owned by your orator and said Gay, and all the lands in which they had any legal or equitable interest." (Record, p. 4.)

3. By the express terms of this deed, the legal and equitable interest of Loud & Gay in the lands in controversy vested in the appellant. (Record, p. 4.)

Deed in Trust.

1. This instrument has not a single provision which indicates that the plaintiff and Gay were to have any interest in the property conveyed, or its management.

2. The power "to sell and convey any of said property, either real or personal, at any time they may deem best for the interests of said first party, at public or private sale," is inconsistent with any legal or equitable title or interest remaining in the plaintiff or Gay.

3. The power "to mortgage any portion of said property for the purpose of raising money with which to carry on and conduct said business" is inconsistent with the plaintiff's claim that the appellant was, in effect, a mortgagee.

4. The deed is an absolute and indefeasable conveyance of the real and personal property for the purposes therein expressed.

5. The plaintiff and Gay must have been hopelessly insolvent on the first day of January, 1877. They owed the appellant more than $275,000. The fifth paragraph of the bill clearly shows that upon the alleged settlement the appellant agreed to take less than the amount due him.

6. One provision in the trust deed shows by necessary implication that the firm owed other debts. It is this, "to purchase and pay any existing liens held by third or outside parties on any portion of said property, real or personal, as such trustees might deem best for the protection thereof, and for the benefit of said Charles Winchester." (Record, p. 4.)

7. The plaintiff only contributed $90,000 to the capital stock, and Gay "was to contribute $20,000" thereto. Unless the law aids this averment by the presumption that Gay performed his agreement, Loud & Gay were doing business on a capital of $90,000, or less than one-third of their indebtedness to the appellant. (Record, p. 1.)

8. These facts and circumstances taken into consideration with the terms of the deed in trust lead to the conclusion that the transaction was more of the nature of an unconditional conveyance to a trustee for the purpose of raising a fund to pay debts, than of the nature of a security for the payment of debts. If it belongs to the former class, then the covenant to reconvey is immaterial, because the law would imply the duty when the trust had been performed.

Declaration of Trust.

1. The plaintiff alleges in the seventh paragraph of his bill that the defendant Winchester executed, contemporaneously with said deeds, a declaration of trust, wherein in substance and effect, he declared that upon payment to him by said trustees of the sum of two hundred and seventy-five thousand dollars with interest at five per cent. per annum within ten years, the land and personal property then on hand should be reconveyed to the plaintiff and Gay, and the trust should cease. (Record, p. 5.)

2. The plaintiff does not allege that this declaration of trust was ever delivered to the plaintiff or Gay. The fair inference to be drawn from this paragraph is that it was never delivered to them. But it would seem that this paper should have been delivered to Loud & Gay in order to constitute a defeasance.

3. The plaintiff does not allege that this declaration of trust was executed to Loud & Gay. For ought that appears in the bill of complaint it may have been executed to the trustees.

4. The plaintiff does not allege by whom the reconveyance should be made. But if the declaration of trust is consistent with the deed in trust, this reconveyance must be made by the appellant, for the deed in trust provides that this trust shall continue ten years, and at its expiration, all the property both real and personal, remaining in the hands of the trustees, shall be conveyed to the appellant Winchester by the trustees.

5. The covenant to reconvey alleged to be found in the declaration of trust, does not make the conveyance a mortgage. There is no absolute rule that a covenant to reconvey shall be regarded, either in law or equity, as a defeasance. Standing alone is not sufficient to work that result.

No Debt.

1. The relation of debtor and creditor between the firm of Loud & Gay and the appellant was extinguished by the operation of the deeds and the declaration of trust.

2. Neither the deeds nor the declaration of trust contain any provision which recognized the fact that the debt still existed. Nor are there any facts averred in the bill from which to infer an intention to let the debt remain with a reciprocity of remedies as between mortgagor and mortgagee.

3. The plaintiff does not allege that the sum of money which the trustees must pay to Winchester before the latter must convey to the plaintiff and Gay, is owing in the form of a debt, which either they or the trustees are bound to discharge.

4. If the conveyance to the appellant was intended as a mortgage then he would have a right to foreclose the mortgage, but if he had brought such a suit, an answer setting up the deeds, and that there was no promise, express or implied, on the part of the alleged mortgagees to pay any debt, would have been a complete bar to the action.

5. There was no collateral undertaking on the part of Loud & Gay to pay the money which the defendant Winchester might advance or become liable to pay during the ten years, to execute the trust or to pay any existing liens, and this fact though not conclusive is to be taken into consideration, in ascertaining whether the transaction was a mortgage or not.

6. Under the deed from the plaintiff and Gay, the appellant held the land and hence was paid, and the debt was in effect cancelled; therefore, as there was no agreement, express or implied, on the part of the alleged mortgagors or the trustees, to pay the appellant any sum of money, there is no debt, and hence no mortgage.

7. In any event the transaction could only be considered as a mortgage of the land remaining after the debts were paid. The principal intent of the conveyances was to make payment of certain debts of Loud & Gay. Their secondary intent was to return those lands only not necessary for this purpose. They were not a mere security for payment, but a mode of making actual satisfaction: *Alleghany Ry. & Coal Co. v. Casey*, 79 Penn. St., 84.

Possession.

1. The trustees, upon the execution and delivery of the deeds, took immediate possession of the property. This circumstance is consistent with Winchester's claim that the title has vested in him absolutely, and inconsistent with the plaintiff's claim that Winchester was in effect a mortgagee.

Value of Property.

1. This is usually considered important in determining whether the transaction was intended as an absolute transfer of the title or as a mere security.

2. The plaintiff alleges in the second paragraph of his bill, the ownership of various kinds of personal property "necessary for the successful prosecution of the business of manufacturing lumber and salt and transporting the same," but does not allege that Loud, Gay & Co. then had any logs, salt or lumber on hand.

3. He does not state the value of this property at the time of the transfer to Winchester, but alleges its value in the month of September, 1881. This allegation is found in the fifth paragraph of the bill, and is as follows: "And which said property, real and personal, is worth at least the sum of $800,000." (Record, p. 4.)

4. The plaintiff in substance alleges in the ninth paragraph of his bill that the trustees have purchased pine lands at a cost of $30,000, and have paid for the same out of the "proceeds of said business," and that they have also paid Winchester $17,000. (Record, p. 6).

5. He also alleges in the same paragraph "that the lumber and logs on hand and the proceeds, rents and earnings of said property will yield for the present year the sum of $330,000." (Record, p. 7). Add to this sum the amount paid for pine lands and the amount alleged to have been paid to Winchester, and we have the sum of $377,000 which has been produced by the services of the trustees.

6. In other words, to make out inferentially a difference between the actual value of the property and the amount of the indebtedness to Winchester as fixed by the settlement, the plaintiff adds to the property which Loud, Gay & Co. transferred to Winchester January 1, 1877, its value as it has been enhanced by Winchester's money, and five years' services of the trustees.

7. But the plaintiff does not allege whether there has been any advance or decline in the lumber market since the first day of January, 1877, neither does he allege the amount of the "existing liens

held by third or outside parties on any portion of said real or personal property," which lien the trust deed seems to recognize.

8. For these reasons the value of the personal property which the trustees had on hand in September, 1881, is of no importance in determining what was the difference between the value of the property conveyed and the amount of the indebtedness to Winchester.

9. The value of this personal property in the year 1881 may be important in one view of this case. It may be the very reason why the plaintiff files his bill to have the conveyance to the appellant declared to be a security. It may pay now, but it would not have paid before the trustees had got together $330,000 worth of property for sale.

Special Relief Prayed.

10. That the writings may be decreed to be in the nature of a security; that upon the payment of the sum of $275,000 and interest, a reconveyance may be made by Winchester to the plaintiff and Gay; that the appellant be personally charged with all the moneys received in said business, and that he account for the proceeds of the sales of any of said lands. (Record, pp. 9, 10.)

11. No personal decree is sought against the defendants Whiting, Loud, Gay and Wasey, for any of the proceeds of the said business, or for any of the proceeds of the lands sold, but the plaintiff specially prays that the appellant account for such moneys. For these reasons the trustees are not indispensable parties to the accounting. (Record, pp. 9, 10.)

12. The trustees were not parties to the settlement, (Record, p. 3,) nor to the alleged agreement with the defendant Winchester. (Record, pp. 5, 6.) They are not, therefore, indispensable parties to this controversy. The only indispensable parties to this controversy are the parties to the settlement, the agreement, and the conveyance, namely: the appellee, Gay, and the appellant. The controversy is wholly between them.

13. There is, therefore, a controversy wholly between the appellee, Gay and Winchester, in regard to Winchester's interest in the property under the deeds and the alleged declaration of trust. To the full determination of this controversy, the other defendants are not in any legal sense indispensable parties.

VII.

Second Controversy.

1. The plaintiff alleges in the third paragraph of his bill that George C. Winchester, fraudulently, obtained possession of certain certificates of purchase of lands, which certificates had been issued to the plaintiff and Alanson R. Loud, and by means of said certificates and proceedings taken between George C. Winchester and the defendant

Charles Winchester, he procured patents for about 13,000 acres of land in his own name, and afterwards transferred the title to about 10,000 acres of said lands to the defendant Winchester, who had knowledge of the rights of the plaintiff and Gay. (Record, p. 3.)

2. The plaintiff also alleges in the eighth paragraph of his bill, that "the said Charles Winchester, as a part of said settlement, and said trust agreed with your orator and said Gay to obtain and perfect in himself the title to the remainder of said 13,000 acres of land (and being about 3,000 acres) for which patents had been issued as aforesaid to said George C. Winchester, and hold said title and said lands in, and apply them as a part of said trust and as a security for said debt of $275,000. Such lands are of the value of $50,000, and such value ought to be applied on such debt. (Record, pp. 5, 6.)

Special Relief Prayed.

3. That the defendant Winchester account "for the value of said lands, and for the value of said 3,000 acres the title to which he agreed to obtain as above stated. (Record, p. 10.)

4. The plaintiff does not allege that the trustees have ever taken possession of these lands, nor that they have ever received directly or indirectly any proceeds from them, nor that they have been guilty of any neglect of duty in not taking possession of them.

5. He asks specially in substance and effect, that the court decree that the value of these lands be applied on said indebtedness as damages in lieu of and in substitution for the specific performance of the alleged settlement. But the bill contains a prayer for general relief, therefore the plaintiff may ask either for a specific performance of the agreement of compromise under the general prayer, or for the alternative relief by way of damages, under the special prayer.

6. The other matters in dispute relate to the property which the plaintiff and Gay conveyed to the appellant. This matter in dispute relates to lands which they did not convey to the appellant. As to the former, he seeks to have an alleged trust executed, and as to the latter, he seeks to have the lands subjected to the trust, that is to say, as to the lands conveyed he claims a right to redeem, and as to the lands not conveyed, he claims the specific performance of an agreement. In other words, as to the former, he has a bill to redeem, and as to the latter, a bill for specific performance.

7. The defendant Winchester might possibly successfully defend upon the ground of multifariousness, but the possibility of this defense does not constitute an objection to the removal of the suit. The right of removal must depend upon the allegations of the bill, although separable controversies may be improperly joined.

8. So far as these lands are concerned the trustees are mere nominal parties, against whom no relief is sought, and against whom no decree can be rendered. This controversy therefore is wholly between the plaintiff and Gay, and the appellant, and they are the only indispensable parties to it.

VIII.

Third Controversy.

1. It is wholly between the plaintiff and the defendants Whiting, Wasey and Henry N. Loud.

2. The plaintiff charges various acts of misconduct upon the trustees. But the fact that they have so managed the business and property that it would yield three hundred and thirty thousand dollars in the year 1881, and that in the last mentioned year they would have a surplus after paying all debts and expenses incurred in executing the trust, of one hundred and fifty thousand dollars, is a conclusive answer to the charges.

3. In addition to this, out of the proceeds of the business they have purchased and paid for pine lands, which cost thirty thousand dollars; and out of the proceeds of the business they have paid to the defendant Winchester, seventeen thousand dollars. That is to say, above the expense of executing the trust they have accumulated since the first day of January, 1877, the sum of one hundred and ninety-seven thousand dollars.

4. But the plaintiff does not aver that these trustees were bound by the express terms of the alleged declaration of trust, to pay any particular sum of money in any year, but the gravamen of the complaint seems to be that the trustees might pay one hundred thousand dollars to the defendant Winchester, and therefore, they should do so, not because the alleged declaration of trust makes it their duty to pay it, but because it would benefit the firm of Loud, Gay & Co.

5. But the substance and effect of every complaint against the trustees is, that they assent to the claim of the defendant Winchester, and in combination with him repudiate the alleged trust. In fact the plaintiff distinctly avers this condition of things in the ninth paragraph of his bill. The allegation is as follows: "That the acts and conduct of Winchester, Wasey, Gay and Whiting are in repudiation of said trust." This state of facts, however, only tends to show more strongly that the principal controversy in this suit is whether the appellant is the absolute owner of this property or a mortgagee.

6. The plaintiff alleges in the seventh paragraph of his bill that the appellant "made and executed a certain declaration of trust," etc. But he does not allege that this instrument was executed by the trustees, or that they ever accepted the alleged trust to pay the defendant Winchester the sum of $275,000 and interest. Therefore the party who executed this instrument, is the one bound by it, and the party against whom the plaintiff must proceed, if its terms are violated, and the trust thereby created, repudiated. In other words, the appellant, Winchester, who executed this instrument, and the appellee and Gay are the only indispensable parties to a controversy as to its execution.

7. The deed in trust contains a specific enumeration of the duties of the trustees. By its express terms they were to pay over to the

appellant the net receipts of the business, and the gross receipts of the sale of lands. They were to account to the appellant, and at the expiration of ten years they were to convey the remaining property to the appellant. This certainly tends strongly to show that the trustees are in no legal sense necessary parties to a controversy in regard to other contract obligations which exist between the appellee, Gay and Winchester, and which controversy cannot arise till after January 1, 1887, "it being the intention that such payment should be made within the time of ten years specified in the trust."

8. The whole transaction as represented by the bill presents some peculiar features. Loud, Gay & Co. were heavily indebted to the appellant, and by a just implication to other creditors, who had liens upon some of the property. The appellant held deeds for a large part of the property, and mortgages upon other portions as security for his debt. The firm made an absolute conveyance of all its property to the appellant. With their knowledge and consent, he conveyed all the property to trustees, with absolute power of management for the space of ten years. The deed in trust was recorded. Its effect possibly was to delay creditors who had liens, in obtaining payment of their debts. The alleged declaration of trust was in the possession of the appellant, and not recorded; it was a secret trust. The plaintiff in effect asks a specific performance of this contract for a reconveyance. All this leads to the conclusion that the plaintiff, Gay and the appellant, the only parties to this contract, are the only indispensable parties to the controversy.

Specific Relief prayed.

9. That the trustees be restrained from contravening the power in trust; that Whiting and Wasey be removed; that until removed they execute the trust for the payment of the debt, and that they render an account.

10. But the determination of the controversies between the plaintiff and Winchester will practically settle every question in the case. If the appellant is the absolute owner of the property, the acts of the trustees are of no interest to the plaintiff. Should the final decree be in favor of the plaintiff, then the other matters would properly belong to the details of an accounting.

11. In fact, as the plaintiff does not seek to charge the trustees personally with any sum of money whatever, but does seek to charge the appellant personally with the proceeds of the business and the sales of land, the trustees are not indispensable parties to the controversy with Winchester. All the relief which the plaintiff seeks in this suit, except the removal of the trustees, might be had in a suit against Winchester and Gay as defendants.

12. The controversy in regard to the removal of the trustees, so far as the same is based on any misconduct, independent of the controversy between the plaintiff and the appellant, is wholly between the plaintiff and the trustees, and the appellant is not an indispensable party thereto.

13. In any event, the plaintiff cannot deprive the appellant of the right to have the controversies between the plaintiff and himself tried in the Federal Court by joining the trustees as party defendants, and asking that they be removed, because they assent to the appellant's claim in the controversy. They may have been joined, and this mere ancillary relief prayed for the express purpose of retaining the case in the state court.

IX.

Arrangement of Parties.

1. Under the act of March 3, 1875 (18 Stat., part 3, 470), the court will arrange the indispensable parties on opposite sides of the real matter in dispute according to the facts:

Removal Cases, 100 U. S., 457.
Barney v. Latham, 103 U. S., 205.

2. The plaintiff in the third paragraph of his bill alleges "That all of said lands, * * * either legally or equitably, belonged to your orator and said Aaron F. Gay, as partners and partnership property. That also the personal property of every name and kind belonged to your orator and said Gay as partners." (Record, p. 3.)

3. The whole aim and object of his suit is summed up in the following prayer for special relief: "That upon the payment to said Winchester of said $275,000 and interest, reconveyance be made to your orator and said Gay." (Record, p. 9.)

4. The mere fact that Aaron F. Gay is placed in the bill as a defendant in this suit does not change his relation to the controversy in the case:

Board of Co. Comrs. v. Kansas Pac. R. R. Co. et al., 4 Dillon, 277.

5. The plaintiff and Aaron F. Gay are on the plaintiff's side of the first and second controversies. And they are citizens of the State of Michigan. The appellant, Winchester, is the only indispensable party to the other side of these controversies, and he is a citizen of the State of Massachusetts. Therefore upon the filing of the petition and bond by the appellant, Winchester, the entire suit was removed to the Circuit Court of the United States:

Barney v. Latham, 103 U. S., 205.

6. The order of the Circuit Court of the United States remanding this suit, should be reversed with directions to reinstate the cause upon its docket, and proceed therein.

S. M. CUTCHEON,
Solicitor for Appellant.

108-130

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JAMES H. McKENNEY

In the United States Supreme Court,

OCTOBER TERM, A. D. 1882.

CHARLES WINCHESTER,
Appellant,
vs.
HENRY M. LOUD,
Appellee.
No. 924.

Brief of Appellee on motion to advance and dismiss under the 32d Rule.

A. T. BRITTON.
J. H. McGOWAN.
Attorneys for Appellee.

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS.
1883.

In the United States Supreme Court,

October Term, A. D. 1882.

CHARLES WINCHESTER,
APPELLANT,
vs.
HENRY M. LOUD,
APPELLEE.

No. 924.

Brief of Appellee on motion to advance and dismiss under the 32d Rule.

This cause was originally commenced in the State court in the county of Iosco and State of Michigan. It was a bill in chancery, which alleged that the complainant, (now appellee,) Henry M. Loud, in conjunction with Thurston Priest, Henry S. Shephard, Alanson R. Loud, Aaron F. Gay, Charles Winchester, and George C. Winchester, formed in 1865 a copartnership, under the name of Loud, Priest & Shephard, for the manufacturing of lumber and salt, for the buying of real estate, principally such as were known as pine and other timber lands necessary for the carrying on the business of manufacturing lumber in its various forms, and in connection therewith the purchase and sale of merchandise.

It further alleged that said Shephard having sold his interest in said partnership to his partners, and said George

C. Winchester having sold his interest therein to said Charles Winchester, the copartnership of Loud, Priest, & Shephard was discontinued, and on the first day of January, 1867, another copartnership was formed for same purposes under the name of Loud, Priest & Gay. Said copartnership was composed of the complainant, (now appellee,) who contributed $90,000 of the capital stock; of Charles Winchester, who contributed $50,000; of Aaron F. Gay, who was to contribute $20,000; of Thurston Priest, who contributed $20,000, and of Alanson R. Loud, who was to contribute $20,000.

It further alleged that in the year 1870 the complainant and said Aaron F. Gay bought all the interest of their other partners, and thereafter continued the business under the partnership name of Loud, Gay & Co.

The bill further alleged that during the existence of the said several firms and up to the first day of January, 1877, said several firms had purchased about ninety thousand acres of pine lands; that they owned all necessary teams, trucks, wagons, and implements; that they had built mills, salt-blocks, dwellings, store-houses, tramways, docks, wharves, &c., and that they owned vessels of various kinds, and all other personal property necessary for the successful prosecution of the business of manufacturing lumber and salt, and selling and transporting the same, of all which property the complainant and said Aaron F. Gay became the sole owners by purchase, as aforesaid.

It was further alleged that during the existence of said several partnerships the said several firms became indebted to said Charles Winchester in large sums of money, all of which were finally assumed by the complainant and the said Gay, and with the consent of the said Winchester they only were to be held therefor.

It was further alleged that during the existence of said several partnerships, contracts with various private owners

for the purchase of some of the lands heretofore mentioned were made by the complainant and said Aaron F. Gay, either in their several or joint names, and others of said lands were purchased from various private owners in the names of the complainant, of said Gay, and of said Charles Winchester ; that some of said contracts were assigned by the claimant and said Gay to said Charles Winchester as security for the debt which they owed him, and that upon such assigned contracts he received deeds for the lands described therein, and held same as such security, and for the use and benefit of the complainant and said Gay, the aggregate area of the lands thus conveyed to and so held by said Charles Winchester being about 19,400 acres.

That about 13,000 other acres of said lands were located and purchased by the complainant and Alanson R. Loud from the United States, and certificates of purchase therefor were issued to them ; that one George C. Winchester fraudulently, and without the knowledge or consent of the complainant or of said Gay, obtained possession of said certificates, and procured the issue of patents from the United States in his own name ; that said George C. Winchester thereafter transferred to said Charles Winchester the titles to about ten thousand acres of said lands, said Charles Winchester having full notice and knowledge of the ownership of the complainant and said Gay in said lands, and of the manner in which the titles had been obtained by said George ; and that, well knowing that, he received such titles subject to the rights of the complainant and of the said Gay, the said Charles Winchester only claimed to hold the same as a further security for the indebtedness owing to him by the complainant and the said Gay.

The bill further alleged that a settlement and adjustment was finally had between the complainant and the said Gay on the one part and the said Charles Winchester on the

other part, whereby the said Winchester agreed to take the sum of $275,000 and interest at five per cent. in full discharge and payment of all his claims and demands against the complainant and said Gay upon condition that the same should be secured to him upon all the partnership property of complainant and said Gay, and being the property which had become vested in them by purchase or otherwise as successors to the said several firms heretofore mentioned; that to carry out said agreement the complainant and his wife, and the said Aaron F. Gay and his wife, on the first day of January, A. D. 1877, conveyed to said Charles Winchester all their right, title, and interest in and to any lands situated in the State of Michigan not theretofore conveyed to said Winchester, by means of which deed and of the deeds previously executed to him, as heretofore recited, there was conveyed to said Charles Winchester all the lands owned by the complainant and said Gay, and all the lands in which they had any interest, legal or equitable, including said lands for which said George C. Winchester obtained the patents, as above stated, and all the lands in which said firms had any interest, including all said lands held in said Charles Winchester's name as aforesaid, and also transferred to said Charles Winchester all and singular all the personal property which they owned or had any interest in, and which said property, real and personal, was worth at least the sum of eight hundred thousand dollars.

It was also alleged that to further carry out said agreement and settlement the said Charles Winchester and his wife, by deed of same date, viz., January 1, 1877, duly witnessed, acknowledged, and recorded, conveyed all of the aforesaid lands and personal property to Herbert F. Whiting, of Boston, Massachusetts, and Henry N. Loud, of Oscoda, Iosco county, Michigan, and George E. Wasey, of Detroit, Michigan, in trust, to take possession of all of said property,

whether real or personal, and for the period of ten years to do any and all things necessary to successfully carry on a general lumber and salt business at Oscoda, Iosco county, Michigan, being the business really belonging to the complainant and the said Gay, and whose capital was represented by the property thus conveyed, said trustees being required to pay direct to said Winchester the proceeds of any real estate sold by them; to render to him once a year, and as much oftener as he might require, a full statement of the business, and of all their receipts and disbursements, and at the expiration of ten years to convey to said Charles Winchester, his heirs and representatives or assigns, all the property, both real and personal, then remaining in their hands.

It was further alleged that at the same time with the execution of aforesaid trust deed, and for the purpose of showing its purpose and object, the said Charles Winchester made and executed a certain declaration of trust, in which, after reciting the execution of said deeds of the complainant, and of said Gay to said Winchester, and the deed of trust by said Winchester and wife to said Whiting and others, the said Charles Winchester therein declared that upon the payment to him by said Whiting, Lond, and Wasey, trustees, of the sum of $275,000, and interest at the rate of five per cent., in instalments, that said lands and personal property then remaining on hand should be reconveyed to the complainant and the said Gay, and the said trust should cease; and which declaration of trust alleged to be in the possession of said Winchester, it was prayed that he should be required to produce, and, when so produced, that same should be taken as part of the bill of complaint.

It was alleged that said Charles Winchester, as a part of aforesaid settlement and trust, further agreed with the complainant and said Gay that he would perfect in himself the

title to the residue of the thirteen thousand acres for which George C. Winchester had obtained the patents in his own name, and of which he had previously conveyed 10,000 acres to said Charles Winchester, said residue being the other 3,000 acres, and which residue, alleged to be of the value of $50,000, were to be held as part security for and to be applied towards the payment of said agreed indebtedness of $275,000, and interest.

It was further alleged that said trustees, Whiting, Loud, and Wasey, in pursuance of said trust deed and of said declaration of trust, took possession of all said real estate and personal property, and until the fall of 1880 continued to manage the same with the design of carrying out the purposes of said trust, said Henry N. Loud and George E. Wasey being the active trustees; but that having purchased pine lands to the amount of about $30,000, and having rebuilt a saw-mill, salt-blocks, and other property, which had been destroyed by fire, all of which were paid for out of the proceeds of said business, they were, by reason of such expenditures, unable to pay said Charles Winchester the instalments due him up to and about the first day of November, 1880, except about $17,000, which was duly paid to said Winchester in said year; and that in the meantime, although the said Whiting, Loud, and Wasey, trustees as aforesaid, had formed themselves into a copartnership under the name of the Oscoda Salt and Lumber Company, and under which name they had and have ever since conducted said business, yet that until the first day of November, 1880, said Winchester was informed of all said expenditures and consented thereto, as was provided for in the trust deed aforesaid.

It was then further alleged that on or about the 23d day of November, 1880, said Charles Winchester determined to repudiate said trust and to thereafter hold, control, and dispose of the property as his own and without reference to

the rights of the complainant; that said Winchester thereupon notified the trustees in writing that he cancelled said trust and that same was at an end, and that, claiming the property as his own, he has ever since declared that he would not accept said $275,000 and interest for his said debt.

It was further alleged that said Whiting has never given any attention whatever to the business of said trust, and that his relation to the matter has been purely nominal; that said Gay refused to make any claim as a *cestui que trust* in said property, and confederates with Charles Winchester to deprive the complainant of his rights under said trust; that said George E. Wasey, trustee, and said Aaron F. Gay, partner of the complainant, assent to the claim of ownership of said Winchester, and are in combination and confederacy with him in the repudiation of aforesaid trust; and that said Winchester has employed said Gay and said Wasey to manage said property and business for the individual and sole benefit of said Winchester, and to the exclusion of any interest in the *cestui que trust*, the complainant. That in pursuance of this combination and confederacy to defraud the complainant the books of said concern are not kept so as to show the condition of the business, and to enable an accounting to be rendered thereof; the correspondence relating thereto is conducted by Gay, Wasey, and their bookkeeper, in their individual names; all information concerning said business is refused to the complainant; the business is not managed economically, so as to make no greater expenditures than are necessary for the preservation and operation of the property, and so as to realize as much money as possible out of it to apply on the said debt, but that, on the contrary, no economy is practised in the management of said business, the investments therein have been increased many thousands of dollars beyond its requirements,

the firm name has been used to endorse paper not belonging to the business, lavish expenditures have been made, and lands purchased for a consideration of more than $30,000, and generally the business management and policy has been to use the profits in such manner that said debt shall remain unpaid, and to effectually enable said Winchester to become the owner of the property, relieved from the claim of the complainant.

It is further alleged that, although said Henry N. Loud was the only one of the three trustees who had any practical knowledge of the business of manufacturing lumber and salt or its incidents, yet that said Wasey and Gay have taken from him the management of the business; that they and their employés refuse to give him any information or to recognize his authority as trustee, and that he is generally opposed and thwarted by them in his efforts to execute said trust.

The bill therefore prayed that the trust recited should be declared and enforced; that an accounting might be had; that all lands or other property purchased with the proceeds of the business subsequent to the creation of said trust should be made subject thereto; that said Wasey and Whiting should be removed as trustees, and others be appointed in their place and stead, and that until so removed the said Winchester, Wasey, Henry N. Loud, Whiting, and Gay should be enjoined and restrained from disposing of the property or in any way interfering with the same other than for the purposes of said trust; that the salaries of the trustees and their agents should be fixed at some equitable amounts; that said trustees should be decreed to execute said trust and manage said property for the payment of said debt, and that upon the payment of said debt a reconveyance of all the remaining property should be decreed to be made to the complainant and the said Gay. There were other and

general prayers for relief, which it is unnecessary to now repeat.

Thereupon, and before answer filed, the said Charles Winchester filed a petition for removal of the cause to the Circuit Court of the United States. In this petition it was alleged that the plaintiff was a citizen of the State of Michigan, and that the petitioner, one of the several defendants, was and is a citizen of the State of Massachusetts; but that "the principal controversy in said suit is wholly between "said plaintiff and your petitioner, who are citizens of dif-"ferent States, and which controversy can be fully deter-"mined as between them." The other defendants, with the exception of Whiting, were and are citizens of the State of Michigan.

When the cause reached the United States Circuit Court a motion was made by complainant to remand it to the State Court.

This motion was granted and the cause remanded, and from the order remanding an appeal has been taken to this court.

The question, and the only question now presented, is, Did the Circuit Court have jurisdiction under the second section of the act of March 3, 1875.

ARGUMENT.

We maintain that it did not. The construction of the second section of the act of March 3, 1875, has been settled by this court in numerous cases. The meaning of the first clause was determined in the removal cases, 100 U. S., 457, to be, that, disregarding as immaterial the mere form of the pleadings, if, in arranging the parties upon the respective sides of the real matter in dispute, all those on one side are citizens of different States from those on the other, the suit is removable; and in Barney *v.* Latham, 103 U. S., 205, the sec-

ond clause of said act was construed to mean that a suit was removable if there was in it a separable controversy wholly between some of the parties who are citizens of different States which can be fully determined as between them.

Blake *v.* McKim, 103 U. S., 336.
Hyde *v.* Ruble, 104 U. S., 407.
Corbin *v.* Van Brunt, 105 U. S., 576.

Fraser v. Jennison, Mor. Dan. Vol. 5, p. 204.

We do not understand counsel for appellant to antagonize these rules of construction, but to contend that upon the averments of the bill the controversy involves only the question whether Winchester is the absolute owner of the property, and upon which question the complainant and Gay, citizens of Michigan, are the only indispensable parties on the plaintiff side, and Charles Winchester, a citizen of Massachusetts, is the only indispensable party on the defendant side.

But no answers having been filed in this cause, the averments of the bill of complaint must determine the scope and character of the pending controversy. The bill alleges that whilst about $800,000 worth of property belonging to the complainant and to Aaron F. Gay has been conveyed by them to certain parties in trust to be held and managed by them so as to secure the payment in instalments of an agreed indebtedness of $275,000 and interest to Charles Winchester, and upon such payment the residue to be conveyed back to the complainants and said Gay, yet that said trustees and said Gay, in combination and confederacy with said Winchester, are managing the estate so as to defeat said trust and to so prevent the payment of said indebtedness, as to vest the absolute ownership of the whole of the property in Winchester. Whereupon the complainant prays that said trustees may be required to exhibit all their transactions in

connection with said estate and business; their removal is asked for cause shown, and, until so removed, that they be enjoined and restrained from either using or disposing of said property except according to the terms of the trust. The *object* of the bill is to discover how the trust property has been managed and disposed of; to compel its economic administration so as to liquidate the agreed indebtedness according to the terms of the trust, and to compel a reconveyance by the trustees of the residue of the property and business to the complainant and Gay when said indebtedness shall have been paid off. The trustees are all indispensable parties to this suit, and the suit embraces only one indivisible controversy. It is not wholly between citizens of different States, and fully determinable as between them, because some of the necessary defendants are citizens of the same State with the plaintiffs.

Suppose that the existence of the trust and its mismanagement in manner and form as alleged by the complainant should ultimately be sustained by the court, and that the proceeds from the business in the trustee's possession should be found to be sufficient to pay off the indebtedness to Winchester, and that there should remain a residue of property to be conveyed back to the complainant: what effective decree could the court enter if Winchester was the only defendant, and if all the other defendants were eliminated from the cause? The proceeds of the business and the business itself would be in the legal and proper possession of the trustees, and the title to all real estate or personal property would be vested in them. How could Winchester be required to pay over proceeds not in his possession, or to reconvey real estate to which he has not the title?

Or suppose that, *inter alia*, the court should find, and so decree, that conveyances of real estate made by the trustees failed because not in proper execution of their power; that

would certainly bind the trustees in any proceeding which might be instituted on the part of the purchasers against said trustees. In such case they would necessarily be parties to the decree which might be rendered in the case, and by which they would be bound; and if so bound by such a decree, they cannot be merely nominal parties to this litigation.

See Evans *v.* Faxon, Federal Reporter, vol. 10, No. 3.

Illustrations might be multiplied. If the court should find in favor of the complainant, it is difficult to perceive what decree could be rendered to which *all* the defendants in this cause would not be necessary and indispensable parties. The only contingency wherein they might not be such parties would be if the court decided against all the claims of the complainant; but upon the theory of his suit they cannot be dropped out.

To state the matter more definitely, we contend—

1st. That Wasey, Whiting, and Loud are indispensable parties, *because* the trust alleged and sought to be established is a trust created in them who are in the possession and management of the property, and the suit is to determine what their title and possession are, what their rights and what their duties are.

Charles Winchester is also an indispensable party, *because* the suit is also to determine what are his rights in the property and business. They are averred to be those of a beneficiary under the trust.

The object of the bill being to have a decree defining the rights of these parties, viz., Henry N. Loud, Wasey, Whiting, and Winchester, who are in the possession, management, and disposition of the property, and whose relation is stated to be as follows: Loud, Wasey, and Whiting, trustees, and Winchester a beneficiary under them, whilst Winchester

claims as owner, and that the others are his agents, and not trustees; it is manifest that all these persons are indispensable parties.

2d. Gay is also a necessary party. The trust alleged is stated to be a trust created by the complainant and Gay together, as partners, to secure the payment of their partnership debt, and when the debt is paid, that the property is to be conveyed to them in their partnership character. The object of the bill is to establish such a trust and to enforce its execution.

It is not a bill to compel payment to the complainant of some specific sum, nor to convey to him some defined share of the property. The case is that he must first establish that he and Gay have created a trust for them as partners, owing a partnership debt, to pay that debt, which is owing to Winchester; that the trustees are to manage this property so as to pay Winchester, and, when he has been paid, that the property should be conveyed jointly to the complainant and Gay. In every part of that controversy Gay is equally a party with the complainant and necessary to its determination.

That the bill avers that Gay alleges that he does not now claim as a *cestui que trust* does not make him any the less a necessary party, as appellant's brief contends. And this for the reason that the bill further avers that Gay does this for the purpose of depriving the complainant of his rights under the trust, said Gay being in combination with Winchester in repudiation of the trust.

It is a part of the case necessary to establish the trust that the complainant must show that he *and* Gay created the trust; that he *and* Gay are the *cestui que trusts;* that the trustees are trustees for *both* of them; that Winchester's rights are to receive payment of their *joint* debt, and that said debt being satisfied, the property is to be conveyed by